Pegasus Group

APPEAL STATEMENT OF CASE

GEORGE AND DRAGON PUBLIC HOUSE, 1 LONDON ROAD, SWANSCOMBE, DA10 0LQ

Mr A Mumtaz | September 2020 | P19-1774

SEPTEMBER 2020 | FS | P19-1774

APPEAL STATEMENT OF CASE

IN RESPECT OF: REFUSAL OF APPLICATION FOR CHANGE OF USE FROM A PUBLIC HOUSE (CLASS A4) TO A HOT FOOD TAKEAWAY (CLASS A5)

ON BEHALF OF MR A MUMTAZ

GEORGE AND DRAGON PUBLIC HOUSE, 1 LONDON ROAD, SWANSCOMBE, DA10 0LQ

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1.0 INTRODUCTION

1.0 This Statement of Case has been prepared by Pegasus Group on behalf of Mr A Mumtaz in support of an appeal against the decision of Ebbsfleet Development Corporation to refuse planning permission for the following development at The George & Dragon, London Road, Swanscombe:

> *"Change of use from public house (Use Class A4) to pizza delivery and takeaway (Use Class A5) and installation of ancillary equipment including extraction duct."*

1.1 The application was originally received and validated by Ebbsfleet Development Corporation in November 2019. However, it was subsequently made invalid by the Council in January 2020 as they requested additional information before they could determine the application.

1.2 The requested additional information was submitted, and the application was made valid again on 20th April 2020. Planning permission was refused via delegated powers on 15th June 2020.

1.3 From the Decision Notice (ref: EDC/19/0203) it can be seen that planning permission was refused for the following reasons:

> *"1. The proposal would result in loss of a community facility for non-community purposes, contrary to policy DP21 of the Dartford Development Policies Plan July 2017. Sufficient evidence has not been provided within the application to demonstrate that the facility is shown not to be needed by the community nor that reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community.*
>
> *2. The proposal would provide a hot food takeaway (Use Class*

A5) in an inappropriate location outside of a designated centre identified in the development plan, contrary to policies DP14 and DP19 of the Dartford Development Policies Plan July 2017 and paragraph 85 of the National Planning Policy Framework. Insufficient information has been provided to demonstrate that the sequential test has been met and that it would not cause harm to the long-term vitality and viability of a designated centre, nor has an adequate justification been provided for the proposed Class A5 use in a location to which development plan policy identifies as inappropriate.

3. The proposal has not demonstrated that adequate provision for customer parking could be provided at the site in addition to staff parking. This would likely result in unacceptable adverse impacts upon the transport and access conditions within the surrounding area, unacceptable increases to on-street parking, and give rise to noise and disturbance impacting residential amenity in the immediate area, contrary to policies DP3, DP4, DP5 and DP19 of the Dartford Development Policies Plan July 2017."

APPENDIX 1 – DECISION NOTICE AND OFFICER'S REPORT REF: EDC/19/0203

Grounds of Appeal

1.4 Refusal reason 1 asserts that proposal has included insufficient evidence to clearly demonstrate there is no demand for the continued use of the site as a public house in line with the guidance set out in Policy DP21.

1.5 It is held by the appellant that the marketing exercise and evidence submitted clearly demonstrates that there has been no interest in the reuse of the site for a public house occupier should be considered sufficient to demonstrate that there is no reasonable likelihood of the site being occupied as a pub in the near future or as an alternative community use.

1.6 Furthermore, the marketing campaign was undertaken by a reputable estate agent specialising in the sale of licenced premises and it is held that the methods used for the marketing campaign were entirely appropriate.

1.7 Therefore, it is considered that the marketing exercise carried out was entirely adequate and has demonstrated that there is no demand for the continued use of the site as a public house or other community facility. As such, the proposal is compliant with Policy DP21 of the Dartford Development Policies DPD.

1.8 In addition, limited consideration appears to have been given to a number of significant benefits involved with the re-use of the site as a hot food takeaway.

1.9 In relation to the Council's assertion that inadequate information has been provided to demonstrate that the sequential test has been met, the site is already a main town centre use (Class A4) and the proposal would not create any additional town centre floorspace outside of an existing centre as it is for a change of use only. As such, it is not considered that the sequential test should be determinative in the assessment of this application.

1.10 Notwithstanding this, the appellant provided a sequential test during the course of the application and at no point were the details of this challenged by the Officer. It was only at the point of the receipt of the Decision Notice and Officer's report that the Council queried the adequacy of the sequential test. As explained later in this statement, it is held by the appellant that the sequential test was entirely sufficient.

1.11 On a without prejudice basis, the appellant has further reviewed a range of available resources to support of this appeal. Overall, it is still held that there are no available, suitable alternative sites within or at the edge of the designated centres within a reasonable catchment area of the appeal site and therefore the sequential test has been passed.

1.12 Although Policy DP19:2 states takeaways will not normally be permitted outside of town centres, the NPPF takes a 'town centre first' approach (i.e.

locations outside of a centre can be considered provided the sequential test is adopted). It is considered that Policy DP19:2 is intended to be applied in a similar manner.

1.13 A separate Highways Statement has been prepared and submitted with this appeal in relation to Refusal Reason 3 which clearly demonstrates the proposed parking area would provide more than sufficient parking for employees and customers of the takeaway and therefore the proposal would not result in any detrimental impact on highway safety or unacceptable increase in on-street parking.

Appeal Statement

1.14 This Statement will expand upon the grounds of appeal, and set out the justification for the proposal. It will do this, first of all, by reviewing the site and surroundings in terms of its planning context and summarising the relevant planning history and planning policy.

1.15 Then, it will proceed to demonstrate how the proposal complies with both national and local planning policies, that it is an appropriate development in accordance with national planning policy and that there are no material considerations which outweigh its acceptability.

2.0 SITE DESCRIPTION

2.0 The appeal site comprises a former public house (Class A4) at the junction of High Street and the A226 London Road/Galley Hill Road. It was previously occupied by The George and Dragon pub.

2.1 The site comprises a 3-storey building at the northern part of the plot with a parking and servicing area to the rear. The parking area is screened from view by a brick wall which runs along the High Street.

2.2 The site is bordered by commercial/industrial uses to the west and to the north (on the opposite side of London Road). The Church of All Saints, which is located to the east of the site (on the opposite side of High Street), was previously converted to residential apartments (Class C3).

2.3 The ground floor of the building comprises an internal bar and seating area, with a dining area and kitchen to the rear. There is a basement which was used for storage whilst the first and second floors were used as staff/guest rooms.

2.4 Neighbouring uses consist of commercial operations to the west and south in the Galley Hill Industrial Estate. On the northern side of London Road that are further commercial units with some residential apartments. A Grade II* listed building, the Church of All Saints, lies to the eastern side of High Street, which has been converted to residential apartments, and further residential properties are located to the south east.

2.5 The site lies within the Borough of Dartford and within the Swanscombe Peninsula Major Development Site as identified in the Ebbsfleet Implementation Framework

2.6 The site is not located within a designated Conservation Area. It is not a statutorily Listed Building. However, the Church of All Saints (on the opposite side of High Street) is a Grade II* Listed Building.

2.7 The entire site is located within Flood Zone 1, the area least at risk from flooding.

3.0 THE APPEAL PROPOSALS

3.0 The appeal proposals are described within the submitted application documentation, including the Design and Access Statement, and are therefore not repeated here.

4.0 PLANNING HISTORY

The Appeal Site

4.0 Prior to the application subject to this appeal, there have been a number of applications for the display of signage at the appeal site.

4.1 In addition, planning permission ref: EDC/16/0034 was granted on 16th September 2106 for the erection of a single storey rear extension with construction of enclosure to repositioned stairs to first floor.

The Punchbowl, Nuneaton (Nuneaton and Bedworth Borough Council)

4.2 Planning permission ref: 032816 was refused by Nuneaton and Bedworth Borough Council at Planning Committee on 2nd September 2014 for the change of use of The Punchbowl from a public house (Class A4) to a hot food takeaway (Class A5) with associated alterations for the following reasons:

> 1. The proposal was contrary to policy in that the site was not within an existing Town, Local or District Centre which would be detrimental to the vitality and viability of these centres; and
>
> 2. The proposal cannot achieve a sufficient separation gap from the surrounding residential properties which would lead to a detrimental impact upon the residential amenity of these properties by way of additional noise, disturbance and smells.

4.3 The decision was appealed and the appeal was subsequently allowed on 18th March 2015. A copy of the appeal decision is included at Appendix 2.

APPENDIX 2 – APPEAL DECISION REF: 3000770

1 Brook Parade, Chigwell (Epping Forest District Council)

4.4 An application ref: EPF/2931/16 for the conversion of a bank (Class A2) to a hot food takeaway (Class A5) at 1 Brook Parade, Chigwell, was refused on 1st February 2017 by Epping Forest District Council.

4.5 Part of the single reason for refusal given was that the proposal would provide a service already provided for in the locality, and that therefore there is no overriding need for the development which would outweigh the harm it is likely to cause. The other part of the reason for refusal related to the perceived harmful impact of the proposal on the living conditions of neighbouring occupiers with respect to noise and disturbance.

4.6 This decision was subsequently appealed (ref: 3175558), and the Inspector allowed the appeal and granted a partial award of costs against the Council in respect of their unreasonable consideration of commercial considerations given they included the question of need of the development as part of the refusal reason.

4.7 The appeal decision and associated costs decision are included at Appendix 3.

APPENDIX 3 – APPEAL DECISION AND COSTS DECISION REF: 3175558

5.0 PLANNING POLICY

5.0 The following policy is considered relevant.

Local Planning Policy

5.1 Local planning policy for the Ebbsfleet Development Corporation area is set out within the Dartford Borough Council's planning policy documents, comprising the Core Strategy (2011) and Development Policies Plan (2017).

Dartford Core Strategy (adopted September 2011)

5.2 **Policy CS12** confirms that a network of complementary shopping centres will be developed and supported and that the Development Management DPD will contain policies on the management of these centres as well as the identification and management of local centres.

Dartford Development Policies Plan (adopted July 2017)

5.3 **Policy DP3** states that:

> *"Development will only be permitted where it is appropriately located and makes suitable provision to minimise and manage the arising transport impacts, in line with Core Strategy policies CS15 and CS16. Localised residual impacts on the highway network should be addressed by well-designed off-site transport measures. Adverse effects on residential amenity or the environment must be minimised.*
>
> *Development will not be permitted where the localised residual impacts from the development on its own, or in combination with other planned developments in the area, result in severe impacts on one or more of the following:*

a) road traffic congestion and air quality;

b) safety of pedestrians, cyclists and other road-users;

c) excessive pressure for on-street parking."

5.4 **Policy DP4** states that proposals should include appropriate vehicular access arrangements and that the layout and siting of access should be acceptable in terms of residential amenity, highway capacity and safety, free flow of traffic, cyclists and pedestrians, and visual impact.

5.5 **Policy DP5** confirms that development will only be permitted where it does not result in unacceptable material impacts, individually or cumulatively, on neighbouring uses, the Borough's environment or public health. Particular consideration must be given to areas and subjects of potential sensitivity in the built and natural environment (including as highlighted on the Policies Map) and other policies, and other potential amenity/ safety factors such as (inter alia):

- traffic, access, and parking.

5.6 **Policy DP14** of the Development Policies Plan states that main town centre uses should be located sequentially and in accordance with Policy CS12, considering sites within the Borough's network of centres first. It states that proposals should demonstrate flexibility in design and form and that planning applications for shops outside A-class use will not be permitted outside of centres where the sequential test is not met.

5.7 The policy also states that outside of centres, retail development over **500 m^2** floorspace will be permitted where it both satisfies the sequential test and is demonstrated to be acceptable through a retail impact assessment.

5.8 This is an important point, as clearly the proposed development is well below the 500 m^2 threshold for an impact assessment, and therefore there is no policy

requirement for this to be undertaken.

5.9 **Policy DP19** relates to food and drink uses and states that:

> *"1. Development involving the establishment of any food and drink (A3/ A4/ A5) uses in the Borough will only be permitted where it is demonstrated that criteria (a) to (c) below will be met, including with regard to evidence of potential cumulative impacts:*
>
> *a) There will be no material detrimental effects on the residential amenity of neighbours;*
>
> *b) There will be no material detrimental effects on the local environmental quality as a result of noise, vibration and smells;*
>
> *c) Access, servicing and parking arrangements for the proposal do not result in an adverse material impact on the safety and traffic flows or cause unacceptable increases to traffic and parking.*
>
> *2. The Local Planning Authority will seek to prevent the inappropriate location or clustering of takeaway premises. Takeaways (Class A5) will normally be permitted only within the development plan's network of designated centres; and permission will not normally be permitted for an A5 unit adjacent to an existing or permitted A5 unit (other than at Bluewater)."*

5.10 **Policy DP21, Part 2** states that:

> *"Development of existing community facilities/ land for non-community purposes will not be permitted unless there is clear evidence that:*

a) the facility is shown to be not needed by the community (both current and future planned users), and

b) all reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community. Consideration should include any potential future demand arising from new development located within the catchment area of the facility/ use."

National Planning Policy

5.11 The revised National Planning Policy Framework (NPPF) was published in February 2019 and sets out the Government's planning policies for the planning system to ensure that the planning system helps to achieve sustainable development.

5.12 The key objective of the NPPF is to achieve sustainable development and **paragraph 8** confirms there are three overarching objectives which need to be pursued, namely economic, social and environmental. The economic role should contribute to sustainable development by building a strong, responsive and competitive economy and ensuring the sufficient amount of and right type of development to support growth.

5.13 **Paragraph 11** confirms that a presumption in favour of sustainable development is at the heart of the NPPF and for planning applications this means proposals for development conforming to the Development Plan should be approved without delay.

5.14 **Paragraph 38** relates to decision making and confirms that *"local planning authorities should approach decisions on proposed development in a positive and creative way"* and that:

"Decision-makers at every level should seek to approve

applications for sustainable development where possible".

5.15 **Paragraph 80** of the NPPF confirms that the planning system should facilitate condition in which businesses can invest, expand and adapt. It goes on to state:

> *"significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development."*

5.16 **Paragraph 86** of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

5.17 **Paragraph 87** confirms that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

5.18 **Paragraph 89** states that when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m2 of gross floorspace).

5.19 This should include assessment of:

> a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment

area of the proposal; and

b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

5.20 **Paragraph 90** states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.

5.21 Section 8 of the NPPF deals with promoting healthy and safe communities. This section recognizes the importance of community facilities and their role in promoting healthy, inclusive and safe communities.

5.22 At **Paragraph 92** of the NPPF, it states that local authorities should plan positively for community facilities and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs.

5.23 **Paragraph 93** confirms that planning policies and decisions should consider the social, economic and environmental benefits of estate regeneration.

5.24 Overall, the NPPF confirms that the primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent it. Local Authorities should approach development management decisions positively – looking for solutions rather than problems so that applications can be approved wherever it is practical to do so. Securing the optimum viable use of the property and achieving public benefits are key material considerations for application proposals.

6.0 STATEMENT OF CASE

6.0 This section of the statement sets out the assessment of the proposals from a planning perspective and demonstrates how the proposals is compliant with the relevant planning policy and that no

6.1 The reasons for refusal relate to the following key issues:

> *1. Loss of an existing community facility with insufficient evidence to demonstrate compliance with Policy DP21;*
>
> *2. Insufficient information has been submitted alongside the application to satisfy the local planning authority that the proposed development has passed the sequential test and would not have an adverse impact on vitality and viability of the local centres or to justify the acceptability of an A5 use in this location; and*
>
> *3. Lack of evidence to demonstrate that adequate provision for customer parking could be provided in addition to car parking which would give rise to unacceptable adverse impacts upon transport and access conditions within the surrounding area; unacceptable increases in on-street parking; and give rise to noise and disturbance.*

6.2 Each of these key issues are addressed in turn below:

Refusal Reason 1 – Loss of Existing Public House

6.3 The first reason for refusal relates to the loss of a community facility for non-community purposes and the fact that the Council consider sufficient evidence has not been provided within the application to demonstrate that the facility is shown not to be needed by the community nor that reasonable efforts have been made to preserve a community use.

6.4 Given the existing use is considered as a community facility, the proposal needs to demonstrate it is compliant with Policy DP21 of the Development Policies Plan which requires clear evidence that a) the facility is shown not to be needed by the community (both current and future planned users), and (b) that all reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community.

6.5 The Council highlight that the level of public objection indicates that the proposal does not satisfy criteria a) as there is a local need for such a community facility.

6.6 In relation to the level of importance and need for an existing site to be retained as a community facility to serve a local community, there is the option for key community facilities to be nominated as assets of community value so that community groups can bid for an alternative use for the site.

6.7 No nomination appears to have been submitted for this site, suggesting that there the local interest and need to retain the site as an existing community use is not as apparent as the Council suggest. Furthermore, this is amplified through the objections received which are, for the most part, concerned with the potential impacts of a takeaway or a lack of need for an A5 use, as opposed to the loss of the public house.

6.8 In addition to this, there are three alternative public houses in Swanscombe, including The Wheatsheaf (although it is acknowledged this is temporarily closed), within 750 metres of the site (as the crow flies). These pubs are able to serve the local catchment, including those customers already displaced through the closure of the George & Dragon. Therefore, there is adequate alternative provision locally in accordance with paragraph 14.9 in the preamble to Policy DP21.

6.9 As can be seen by the Officer's report included at Appendix 1, the Council also raise concerns about the marketing exercise due to concerns about the duration of the marketing exercise; the justification for the asking price; and

the validity of marketing during social distancing.

6.10 It is understood that the previous owner of the George and Dragon started looking to sell the business in November 2018 and began marketing the site through RightBiz and via for sale signs at the premises.

6.11 Although there was interest from a variety of operators, none of this was from operators looking to continue to run the site as a public house or an alternative community use.

6.12 The site became vacant in June 2019 and the current marketing campaign of the site began in August 2019. A copy of the marketing information which was submitted during the course of the application has been submitted with this appeal. However, this has been updated given the marketing has continued since the refusal and the latest marketing details are included at Appendix 4 of this Statement.

APPENDIX 4 – MARKETING EVIDENCE

6.13 Whilst it is acknowledged that at the time of the application the marketing period was less than 12 months, the Glossary to the Development Policies Plan (adopted July 2017) states that effective marketing means *"continuous proactive marketing for an appropriate period, **but not exceeding** 12 months."* **[our emphasis]** and therefore 12 months is a desirable maximum, but not stated as a strictly minimum requirement and site specific concerns can be taken into account here.

6.14 The Officer's report included at Appendix 1 states that *"Whilst the Dartford Development Policies plan does not prescribe a minimum marketing period, up to 12 months is referenced. With no viewings having been undertaken for the George and Dragon, and limited supporting information to demonstrate the asking price as reasonable, continuous proactive marketing of the property is therefore not considered to have been demonstrated within the application."*

6.15 In relation to the fact that no viewings have taken place, this is clearly an indication of the lack of demand for the unit as a public house or community facility and not an indication that the continuous proactive marketing of the property is insufficient.

6.16 The Local Planning Authority are effectively suggesting the applicant must continue to market the premises when there is no prospect of viewings just for the sake of meeting the described guidance period which would result in the continued vacancy of the site.

6.17 The Council assert that no evidence has been provided within the application to justify that there is no prospect of the building being used as a public house, nor that a full exploration of alternative community uses has taken place.

6.18 It is unclear what further evidence the Council would wish to see above an unsuccessful period of marketing. Indeed, it is considered that 9 months' active marketing with no interest in the site for a public house occupier should be considered sufficient to demonstrate that there is no reasonable likelihood of the site being occupied as a pub in the near future or as an alternative community use.

6.19 If there was a realistic prospect of the site being reused as a public house or as an alternative community use, then it would be expected that viewings/enquiries would have been made by interested parties seeking to reuse the property for such a purpose. Instead, the only enquiry received during the marketing campaign was for a restaurant operator which would have also resulted in the need for the loss of the public house/community use.

6.20 In terms of the asking price, Sidney Phillips, the estate agent marketing the property is a reputable agency with 7 regional offices which specialises in licenced premises sales. The valuation has been based on the prevailing market conditions and site-specific considerations on the basis of their specialist knowledge.

6.21 As such, in the absence of any evidence to the contrary, it can be trusted that the asking price as justified within the Marketing Report is appropriate for the site.

6.22 As to the question of whether marketing during the 'lockdown' should count due to social distancing, it is our experience that acquisitions were continuing during this period, albeit they were progressing at a slower pace, with potential purchasers still able (and often more likely) to peruse commercial property sites on the internet from their home and make the necessary enquiries.

6.23 Therefore, it is considered that the marketing exercise carried out was entirely adequate and has demonstrated that there is no demand for the continued use of the site as a public house or other community facility. As such, the proposal is compliant with Policy DP21 of the Dartford Development Policies DPD.

6.24 In addition to the above, since the determination of the planning application, the property has remained on the market and the marketing period has now therefore been 12 months. There have still been no offers or any interest in reusing the site as a public house or alternative community facility use.

Other Material Considerations

6.25 There are other factors that should be considered in this matter, not least the continued vacancy of the land, and the need for investment in Swanscombe in the current climate (as for towns across the Country). It is likely that vacancy rates will be increasing across the Country as a result of the recession caused by the Covid-19 pandemic.

6.26 As such, the potential occupation of a currently vacant site for an employment generating commercial use should not be dismissed, even if it is not for a community use which may be considered preferable by the Council.

6.27 Consideration should also be given to the fact that the Government has granted temporary rights for public houses to operate as takeaway (Class A5) uses until

23 March 2021 through the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2020 to help to serve local communities while social distancing is in action

6.28 Thus, the George & Dragon could be occupied as a Class A5 hot food takeaway by the applicant (and therefore the public house use would temporarily be lost) under the current temporary PD rights until March 2021 with only the need to inform the Council of their intention.

6.29 It is expected that takeaways will be important community services for some time to come as restaurants reopen as takeaways and social distancing continues to play a role in society meaning that former businesses are unable to operate as they previously were reducing capacity for covers and customers to dine in.

6.30 Consideration also needs to be given to the impending changes to the Schedule of Use Classes Order which will revoke a number of existing classes including Classes A and D of the Order and will introduce new classes including Classes E and F.

6.31 The thrust of the amendments to the Use Classes Order is to allow greater flexibility for businesses to adapt and diversity to meet changing demands and better reflect the diversity of uses found on high streets and in town centres.

6.32 Although public houses and takeaways will become sui generis uses, and therefore still require planning permission to convert to other uses, a number of other uses which are considered community facility uses under Policy DP21 currently will fall under Class E of the new Use Classes Order and would be able to change to other types of operations such as shops and restaurants without the need for planning permission.

6.33 The proposed change of use would allow for the occupation of a vacant commercial unit and would provide a number of employment opportunities for local residents including young people.

6.34 Indeed, it is anticipated the proposed use could provide up to 25 full and part time job opportunities including a manager, deputy manager, kitchen staff and delivery drivers required.

6.35 The proposal would also result in the reoccupation of a vacant building which is detracting from the appearance of the area. The proposed operator is an internationally renowned operator who would be making a significant investment in the site.

Refusal Reason 2 – Impact on Vitality and Viability of Existing Centres

6.36 The second reason for refusal relates to the fact that the Council consider insufficient information was submitted alongside the application to satisfy the Council that the proposed development can be undertaken without an adverse impact on the vitality and viability of existing centres.

Requirement for the Sequential Test

6.37 As illustrated within the Dartford Policies Map and Appendix B of the Development Policies Plan the site is outside of a designated District or Neighbourhood Centre. However, the site is within 300m of the nearest designated centre at Swanscombe High Street and is therefore defined as an 'edge-of-centre' site.

6.38 National and local policy seek to steer new retail development and main town centre uses (such as hot food takeaways) towards defined town centres. The site is not within a designated centre and is an 'edge-of-centre' site under the NPPF definition.

6.39 Therefore, usually, a sequential test would need to be passed to demonstrate there are no alternative suitable sites within designated centres or at the edge of centres (within 300 metres of the town centre boundary) in order for the

principle of a new takeaway to be acceptable in an out-of-centre location.

6.40 However, in this instance, the proposal would not create any new town centre floorspace outside of a designated centre as it simply seeks to convert an existing town centre use (Class A1) to another town centre use (Class A5) and does not propose any additional floorspace.

6.41 As such, the proposal would have no impact on the vitality and viability of any nearby existing designated centres and a sequential test is not required in this instance.

6.42 Included at Appendix 2 of this Statement is an appeal decision and associated costs decision in relation to a proposal for the conversion of a former public house (The Punchbowl) in Nuneaton to a Class A5 hot food takeaway.

6.43 This site was also located outside of any designated centres and the Council sought to resist the application on the basis that it would have a harmful impact on the vitality and viability of the existing centres as it had not been demonstrated that the sequential test had been passed.

6.44 During their consideration of the appeal, the Inspector highlights at paragraph 11 that the proposal would not result in a town centre use where no such use exists; would simply result on the substitution of one town centre use for another; and therefore did not consider that a sequential test was determinative in the circumstances of the case.

6.45 Given that the appeal proposal before you is for a very similar proposal i.e. the conversion of one main town centre use to another, and therefore would not create any new main town centre use where no such use exists; it is considered that a similar approach should be taken in this appeal and that a sequential test should not be determinative in the circumstances of the case.

The Sequential Test

6.46 Notwithstanding the above, and on a without prejudice basis, the appellant submitted a sequential test during the course of the application in order to address the Council's concerns and demonstrate that there were no suitable alternative sites within a sequentially preferable location which could be occupied by the appellant.

6.47 The sequential test was carried out utilising a range of resources, primarily websites such as 'Zoopla', 'Property Link', 'Rightmove' and 'Prime Location' commercial estate agency websites.

6.48 A search area was then drawn ½ mile around the identified designated centres within Swanscombe which is considered a reasonable search area given the appellant is clearly looking to operate a takeaway within the Swanscombe area (the need for this is considered in detail further below) and the search area encapsulates all centres within the area and potential edge-of-centre sites.

6.49 In addition, the identified websites allow a detailed search within the defined 'area of search' and via a minimum and maximum unit size. This allows one to filter out sites which would clearly be unsuitable for the proposed use (whilst still allowing for a reasonable degree of flexibility) in these areas.

6.50 As such, the appellant searched for sites with a floor area of between 100 m^2 and 500 m^2, the minimum and maximum floorspace within which a viable takeaway of this type can operate.

6.51 A single property was found to be available within Milton Road Neighbourhood Centre. Although the site was in a sequentially preferable location, the floor area was below 100 m^2 and the site was therefore not suitable for the proposed development.

6.52 As such, the sequential test identified that there were no available, suitable, alternative premises within the designated centres and therefore the sequential test had been passed.

6.53 The Officer's report asserts that *"Given that the scale of the proposed use would be expected to draw a much wider catchment than the immediate locality, it is considered that a desktop search alone is not sufficient to assess the availability of suitable property."*

6.54 However, it is considered that it was entirely appropriate for the sequential test to be carried out utilising desktop search to identify any properties which may provide available, suitable, alternative premises within a sequentially preferable location.

6.55 In terms of the area of search, the appellant proposes to operate a Domino's Pizza takeaway at the appeal site and they have identified the Swanscombe area as a specific catchment area in which there is an existing lack of provision of nationwide pizza takeaways.

6.56 There is an existing Domino's in Northfleet to the east and there are existing nationwide pizza operators, such as Pizza Hut in Greenhithe to the west. The proposal will therefore clearly improve choice and improve the quantitative provision in the local area.

6.57 Although it is possible to get deliveries from the existing Domino's store at Northfleet, a new store in Swanscombe would result in more sustainable delivery patterns given that there is a reduced distance for delivery vehicles to travel, and similarly for people wishing to collect.

6.58 The aim of the creation of a new store is to serve a new catchment area in the Swanscombe area which will allow the appellant to serve the area more efficiently than existing stores.

6.59 If any properties were identified which may have fallen within sequentially preferable locations and been broadly suitable for the proposed operator, then a physical inspection of the property would have been carried out. However, this was not the case at the time of the application.

6.60 The method of utilising a wide range of property websites has been accepted as an adequate method in identifying available sites during numerous applications which Pegasus have been involved with including the appeal at The Punchbowl (although the sequential test was not found to be determinative in the outcome of that case).

6.61 The sufficiency and accuracy of the sequential test was not raised as an issue once during the course of the determination of the application and the Officer did not once highlight any other sites which should be considered as part of the sequential test.

6.62 Notwithstanding this, the appellant has carried out an updated review of the identified websites to understand if any properties have become available since the determination of the application and prior to the submission of this appeal which may be in a sequentially preferable location and suitable for the proposed takeaway. This was supplemented by a physical visit to the centres identified.

6.63 However, no further alternative, suitable properties have been identified as being available within the designated centres in the search area.

6.64 Overall, it is therefore considered that the sequential test has been passed and the principle of a new takeaway in this edge-of-centre location is acceptable in this regard.

Need for the Proposed Takeaway

6.65 The Officer's report also states that: *"justifiable reasoning for the proposal needing to be located in Swanscombe would also be required to be demonstrated. As evidenced by local representations received, a range of existing takeaways are present within the nearest centre, providing no justification for the provision of an additional takeaway outside of the designated centre to meet the centre's needs."*

6.66 It should be noted that there is no planning requirement to demonstrate a 'need' for the proposed Class A5 use in Swanscombe, or in the area surrounding the application site. The appeal decision attached at Appendix 3 (ref. APP/J1535/W/17/3175558) relates to a site in an existing centre, at 1 Brook Parade, Chigwell, but is relevant in terms of the way the Inspector has dealt with the issue of 'need', following the Council's reason for refusal highlighting a lack of need for such a use at the site.

APPENDIX 3 – APPEAL DECISION REF. APP/J1535/W/17/3175558

6.67 In the decision, the Inspector states:

> *"Part of the single reason for refusal given was that the proposal would provide a service already provided for in the locality, and that therefore there is no overriding need for the development which would outweigh the harm it is likely to cause. However, these are commercial considerations, which are not rightly the subject of planning decisions…"* [Pegasus' emphasis]

6.68 A copy of the associated cost's decision is also included at Appendix 3 and states the following in relation to the Council's decision to include the matter of 'need' within the refusal reason:

> *"It appears to me therefore that, although the Council concluded that the planning application should have been refused in relation to its effect on the living conditions of neighbouring occupiers, it unreasonably took into account irrelevant, commercial considerations, and failed to substantiate this aspect of its refusal of the application. It therefore made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by objective analysis. By virtue of this I conclude that it has demonstrated unreasonable behaviour, and thereby caused the applicants to incur unnecessary or wasted expense in that part of the appeal process relating to the commercial aspects of the development."*

6.69 Finally, the Council assert that in accordance with Policy DP19:2 takeaways (Class A5) should normally only be permitted within the Development Plan's network of designated centres and the proposal is therefore contrary to this policy given it's out-of-centre location.

6.70 It is considered that the Council is misinterpreting this policy as to impose a blanket ban on any takeaways outside of the centres, regardless of when the sequential test is passed or of site specific circumstances, would not provide any flexibility and would not be in accordance with the general thrust of the NPPF.

6.71 The NPPF seeks to ensure the vitality of town centres, the Framework advocates a sequential, town centre first approach to applications for uses, allowing that, in some circumstances, such uses can be considered outside of town centre or edge of centre locations.

6.72 Therefore, the application of Policy DP19:2 in this way is not in accordance with the NPPF. Instead, the policy should be applied in a way that is in accordance with the NPPF i.e. by seeking to not normally support takeaways outside of the designated centres but allowing them where the sequential test can be passed as is the case in this instance.

Refusal Reason 3 – Highway Safety

6.73 Paragraph 109 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

6.74 Dartford Development Plan Policy DP5 also requires that unacceptable impacts on neighbouring impacts from traffic, access and parking should not be caused by development, supported by policy DP19:1 in relation to these impacts from new food and drink uses (Classes A3, A4 and A5).

6.75 The appeal site comprises a former public house at the corner of London Road and High Street. It is located within a highly sustainable and accessible location being within close proximity to the Swanscombe District Centre, as illustrated within the Council's adopted Local Plan Proposals Map. It is therefore surrounded by a mixture of uses.

6.76 Furthermore, the appeal site is in a location which has good accessibility to public transport being within easy walking distance from bus stops.

6.77 In terms of parking provision, car parking for the unit will be provided to the rear of the unit, vehicular access will be provided via the shared vehicular access off High Street. The car parking is currently unmarked and as part of the proposals it proposed to create 8 no. marked parking bays. These bays will be used by both delivery drivers and customers.

6.78 These spaces will be more than sufficient to serve the delivery drivers and customers of the takeaway as it will be extremely rare for there to even be more than 2-3 drivers needing to park at the site at the same time (as demonstrated in detail within the techincal highways note prepared by Croft Transport Solutions which was submitted during the course of the application).

6.79 It is important to note that during the determination of the planning application the local highways authority (Kent Council Council) provided a consultation response on 13th May 2020 which offered no objections to the proposals subject to planning conditions being attached.

6.80 The Council then appointed a third party to carry out a review of the transport elements of the application and although the response requested further information it did not provide an objection to the proposals. Although the appellant provided the additional information required, the Council did not consider there was sufficient time to consider this during the course of the application and therefore included highway safety as a reason for refusal.

6.81 In support of this appeal a separate highways appeal statement has been

prepared by Croft Transport Solutions which sets out the justification for the parking provision proposed and clearly demonstrates that this would be entirely adequate for the proposed takeaway and would not result in any unacceptable harm to highway safety.

6.82 The third reason for refusal which relates to highway safety also confirms that the perceived increase in on-street parking would result in an unacceptable impact in noise and disturbance which would be detrimental to residential amenity.

6.83 Firstly, it is questioned whether the additional use of public on-street parking spaces could be considered an amenity issue. These spaces are not specifically allocated to any residential properties within the vicinity of the appeal site and therefore any increased demand for the use of these spaces could not reasonably be refused on amenity grounds.

6.84 Secondly, the Council provide no detailed assessment as to what would constitute an additional number of vehicle movements or increase in parking demand that would result in harm to residential amenity which would warrant a reason for refusal.

6.85 Notwithstanding this, as demonstrated above, the proposal would not result in a harmful increase in on-street parking as sufficient off-street parking will be provided in any case.

6.86 Overall, the proposal will be compliant with policies DP3, DP4, DP5 and DP19 of the Dartford Development Policies Plan July 2017.

7.0 CONCLUSION

7.0 This Statement has been prepared in support of an appeal against the decision of Ebbsfleet Development Corporation to refuse an application for a change of use from a vacant public house (Class A4) to a hot food takeaway (Class A5); the installation of extraction/ventilation equipment and minor external alterations.

7.1 This Statement has highlighted that the appellant has carried out a sufficient marketing exercise to demonstrate that there is no reasonable prospect for the continued use of the site as a public house or an alternative community facility and therefore is not contrary to Policy DP21 of the Dartford Development Policies Plan 2017.

7.2 The appeal site has a lawful use as a Class A4 public house. As such, this is considered the fallback position and the proposals should be considered in the context of this. Therefore, it is noted that no additional main town centre use is proposed, merely a change of use from one town centre use to another. As such, this will not harm the vitality and viability of nearby centres and it is not considered the sequential test should be determinative in the assessment of the appeal.

7.3 Notwithstanding this, on a without prejudice basis, the appellant undertook a sequential test during the course of the application which demonstrated that there were no suitable alternative sites within the catchment area which the store is proposed to serve. This has been updated in support of this appeal.

7.4 Furthermore, this Statement has demonstrated that the Council were incorrect to introduce the issue of the need for the proposed takeaway within their reasoning for refusal as this is a commercial matter which is not a relevant planning consideration.

7.5 Overall, it has therefore been demonstrated that the principle of the proposed takeaway in this location is acceptable and the proposal is therefore compliant

with Policy DP19 of the Dartford Development Policies Plan 2017.

7.6 A separate Highways Statement has been prepared and submitted with this appeal in relation to Refusal Reason 3 which clearly demonstrates the proposed parking area would provide more than sufficient parking for employees and customers of the takeaway and therefore the proposal would not result in any detrimental impact on highway safety or unacceptable increase in on-street parking.

7.7 Consequently, it is respectfully requested that the Inspector allows the appeal and accordingly grants planning permission, subject to any conditions as may be considered reasonable and necessary.

APPENDIX 1

DECISION NOTICE AND OFFICER'S REPORT REF: EDC/19/0203

TOWN AND COUNTRY PLANNING ACTS
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015

Application: EDC/19/0203

NOTIFICATION OF REFUSAL OF PERMISSION FOR CHANGE OF USE

To: **Mr Abdul Mumtaz**
C/O Mr Fergus Sykes
First Floor
South Wing
Equinox North
Great Park Road
Almondsbury
Bristol
BS32 4QL

TAKE NOTICE that the **EBBSFLEET DEVELOPMENT CORPORATION**, the Local Planning Authority under the Town and Country Planning Acts, has **REFUSED PERMISSION** for development of land situate

at **The George And Dragon**
London Road
Swanscombe
Kent
DA10 0LQ

and being **Change of use from Public House (Use Class A4) to Pizza Delivery and Takeaway (Use Class A5) and installation of ancillary equipment including extraction duct.**
Your application dated 20th April 2020 is refused on the following grounds:-

1. The proposal would result in loss of a community facility for non-community purposes, contrary to policy DP21 of the Dartford Development Policies Plan July 2017. Sufficient evidence has not been provided within the application to demonstrate that the facility is shown not to be needed by the community nor that reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community.

2. The proposal would provide a hot food takeaway (Use Class A5) in an inappropriate location outside of a designated centre identified in the development plan, contrary to policies DP14 and DP19 of the Dartford Development Policies Plan July 2017 and paragraph 85 of the National Planning Policy Framework. Insufficient information has been provided to demonstrate that the sequential test has been met and that it would not cause harm to the long-term vitality and viability of a designated centre, nor has an adequate justification been provided for the proposed Class A5 use in a location to which development plan policy identifies as inappropriate.

3. The proposal has not demonstrated that adequate provision for customer parking could be provided at the site in addition to staff parking. This would likely result in unacceptable adverse impacts upon the transport and access conditions within the surrounding area, unacceptable increases to on-street parking, and give rise to noise and disturbance impacting residential amenity in the immediate area, contrary to policies DP3, DP4, DP5 and DP19 of the Dartford Development Policies Plan July 2017.

INFORMATIVES :-

1 Statement of Positive and Creative Approach to Decision-Making
In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 and paragraph 38 of the National Planning Policy Framework Ebbsfleet Development Corporation, as local planning authority, has approached the assessment and determination of this application in a positive and creative manner.

This has involved proactive discussions at pre-application and planning application stage to discuss the principles of the proposal and to provide additional information to support assessment of the application. The application was also determined within the relevant timescales.

Signed: Mark Pullin **Dated:** 15 June 2020

Chief Planning Officer
Ebbsfleet Development Corporation
North Kent Police Station, Thames Way, Northfleet, Kent DA11 8BD

Your attention is drawn to the notes below

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NOTIFICATION TO APPLICANT

APPEALS TO THE SECRETARY OF STATE

- If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990.

- If this is a **householder application*** which has been refused and you want to appeal against your Local Planning Authority's decision then you must do so within **12 weeks of the date of this notice**.

- For **all other applications**, refused or permitted, if you want to appeal against your Local Planning Authority's decision then you must do so within **6 months of the date of this notice**.

- **Appeals must be made using a form which you can obtain from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN; telephone: 0303 444 5000; email: enquiries@pins.gsi.gov.uk or online at www.planningportal.gov.uk/pcs.**
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- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

- The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

- In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.

***Householder applications**

These are:

(a) applications for planning permission for development of an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse, or

(b) an application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development

but does **not** include –

(i) an application for change of use;
(ii) an application to change the number of dwellings in a building.

PURCHASE NOTICES

- If either the Local Planning Authority or the Secretary of State for the Environment refuses permission to develop land or grants it subject to conditions, the owner may claim that he/she can neither put the land to a reasonably beneficial use in its existing state nor can he/she render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

- In these circumstances, the owner may serve a purchase notice on the Ebbsfleet Development Corporation in whose area the land is situated. This notice will require the Corporation to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

COMPENSATION

- In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

- These circumstances are set out in Sections 114 and related provisions of the Town and Country Planning Act 1990.

F:plan/Development Control/Admin Support/Official Backing of Decision Notices 2010

Reference: EDC/19/0203

Site Address: The George And Dragon, London Road, Swanscombe, Kent, DA10 0LQ

Proposal: Change of use from Public House (Use Class A4) to Pizza Delivery and Takeaway (Use Class A5) and installation of ancillary equipment including extraction duct.

Applicant: Mr Abdul Mumtaz

Ward: Swanscombe

RECOMMENDATION:

Refuse for the following reasons:

1. The proposal would result in loss of a community facility for non-community purposes, contrary to policy DP21 of the Dartford Development Policies Plan July 2017. Sufficient evidence has not been provided within the application to demonstrate that the facility is shown not to be needed by the community nor that reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community.

2. The proposal would provide a hot food takeaway (Use Class A5) in an inappropriate location outside of a designated centre identified in the development plan, contrary to policies DP14 and DP19 of the Dartford Development Policies Plan July 2017 and paragraph 85 of the National Planning Policy Framework. Insufficient information has been provided to demonstrate that the sequential test has been met and that it would not cause harm to the long-term vitality and viability of a designated centre, nor has an adequate justification been provided for the proposed Class A5 use in a location to which development plan policy identifies as inappropriate.

3. The proposal has not demonstrated that adequate provision for customer parking could be provided at the site in addition to staff parking. This would likely result in unacceptable adverse impacts upon the transport and access conditions within the surrounding area, unacceptable increases to on-street parking, and give rise to noise and disturbance impacting residential amenity in the immediate area, contrary to policies DP3, DP4, DP5 and DP19 of the Dartford Development Policies Plan July 2017.

INFORMATIVES

1. Statement of Positive and Creative Approach to Decision-Making
In accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 and paragraph 38 of the National Planning Policy Framework Ebbsfleet Development Corporation, as local planning authority, has approached the assessment and determination of this application in a positive and creative manner.

This has involved proactive discussions at pre-application and planning application stage to discuss the principles of the proposal and to provide additional information to support assessment of the application. The application was also determined within the relevant timescales.

1.0 SITE CONTEXT AND BACKGROUND

1.1 The application site comprises a parcel of land (625 sq. m) located at the junction of High Street and A226 London Road/ Galley Hill Road. The George and Dragon Public House, a 3 storey building, is situated to the northern part of the site fronting onto London Road with the entrance door accessed from the side of the building on High Street.

1.2 The ground floor of the building consists of an internal bar and seating area, with a small dining area and kitchen to the rear. Stairs to the rear of the bar area provide access to basement below, and to staff/guest rooms on the first and second floors. Externally there is a small seating area near to the side entrance door fronting the High Street. To the rear there is a parking area, storage and larger external seating area which is part covered by a canopy. This area is shielded from view by a boundary wall and fence along the High Street.

1.3 Neighbouring uses consist of commercial operations to the west and south in the Galley Hill Industrial Estate. On the northern side of London Road that are further commercial units with some residential apartments. A Grade II* listed building, the Church of All Saints, lies to the eastern side of High Street, which has been converted to residential apartments, and further residential properties are located to the south east.

1.4 The site lies within the Borough of Dartford and within the Swanscombe Peninsula Major Development Site as identified in the Ebbsfleet Implementation Framework

2.0 PROPOSAL

2.1 The proposal seeks to change the use of the building from use as a public house (Use Class A4) to a pizza delivery and takeaway (Use Class A5). The entrance to the building would be via an existing door on the northern side of the property, near to the existing bus stop. The first and second floors of the building, which are currently used for staff/ guest accommodation ancillary to the current use as a public house, would be retained as ancillary accommodation for the takeaway use.

2.2 Minor changes are proposed to the external appearance of the building for ancillary equipment in connection with the proposed use. These comprise an extraction duct and inlet grill on the western elevation, and air conditioning/ cold room compressors at ground floor level on the southern elevation. No other changes to the external appearance of the building or site are proposed, with the exception of replacement signage indicated on the submitted elevations, which would be subject to control under the Advertisement Regulations 2007.

2.3 The application is accompanied by the following plans and documents:

- Drawing no. 001 Rev. A - Site Location Plan and Existing Site Plan

- Drawing no. 002 Rev. A - Existing Basement and Ground Floor Plans
- Drawing no. 003 Rev. A - Existing First and Second Floor Plans
- Drawing no. 004 Rev. A - Existing Elevations
- Drawing no. 005 - Proposed Site Plan
- Drawing no. 006 - Proposed Basement and Ground Floor Plans
- Drawing no. 007 - Proposed First and Second Floor Plans
- Drawing no. 008 - Proposed Elevations
- Design and Access Statement (Issue 2) by Cook Associates dated November 2019
- Environment Agency Flood Map for Planning dated 26th November 2019
- Letter – Ebbsfleet Development Corporation dated 15th July 2019 (Pre-Application Advice)
- Estate Agent Letter by Sidney Phillips dated 19 November 2019 (Ref. RCO 19112019
- Estate Agent Letter by Sidney Phillips dated 10 January 2020 (Ref. RCO 10102020
- Estate Agent Letter by Sidney Phillips dated 3 March 2020 (Ref. RCO 03032020
- Email – Pegasus Group dated 20th May 2020 (Agent Comments on Marketing)
- Proposed Change of Use Application, George and Dragon Public House, Swanscombe - Transport Note - February 2020 by Croft Transport & Design
- Sequential Sites Assessment, George and Dragon, 1 London Road, Swanscombe dated February 2020 by Pegasus Group (Ref. P19-1774)

2.4 Updated and additional plans were received for the application to provide necessary clarity on the proposed use and function of the rear parking area, as well as further information to address concerns raised upon original submission of the application in terms of loss of community facility, proposed Class A5 use outside of a designated centre, and parking provision.

3.0 RELEVANT PLANNING HISTORY

3.1 14/01120/ADV – Display of 5 Replacement externally illuminated fascia signs in existing positions 1 externally illuminated and 2 No. non illuminated additional fascia signs and 1 No. non illuminated pole sign.

Approved 07.10.14 by Dartford Borough Council

3.2 15/00877/ECFUL – Provision of 3 No. angled flagpoles (retrospective), 1 No. vertical flagpole and ‘café barriers’ within curtilage.

Approved 14.08.15 by Dartford Borough Council

3.3 15/01270/ECADV - Display of Public House name on and graphic motif "on cafe barriers".

Approved 05.10.15 by Dartford Borough Council

3.4 EDC/16/0034 - Erection of a single storey rear extension with construction of enclosure to repositioned stairs to first floor.

Approved 16.09.16 by Ebbsfleet Development Corporation subject to conditions. This consent has now lapsed.

4.0 PUBLICITY

First Round of Publicity - December 2019

4.1 Notification letters were sent to 74 adjoining residential and business properties. The application was also publicised on site via 2no. site notices and in the Ebbsfleet Development Corporation (EDC) weekly list.

4.2 In addition, notification was sent to Dartford Borough Council Swanscombe Ward Members, Cllr Anita Barham and Cllr Emma-Louise Ben Moussa, and Swanscombe and Greenhithe Residents Association.

Second Round of Publicity - May 2020

4.3 151 notification letters were sent, comprising letters to adjoining residential and business properties, and other parties whom had previously commented on the proposal . The application was also publicised on site via 2no. site notices and in the Ebbsfleet Development Corporation (EDC) weekly list.

4.4 In addition, notification was sent to Dartford Borough Council Swanscombe Ward Members, Cllr Anita Barham and Cllr Emma-Louise Ben Moussa, and Swanscombe and Greenhithe Residents Association.

5.0 REPRESENTATIONS

First Round of Publicity - December 2019

5.1 A total of 53 written representations were received following publicity, which are detailed below. These comprise comments from a local resident, local councillors and members of the public.

5.2 Local resident comments stated as being in neither support nor objection - 1no. written representation:

- Query location of the existing 10 parking spaces stated on application form as they are certainly not out the front of the address

5.3 Public comments stated as being in support - 1 no. written representation:

- Swanscombe does not have a recognised pizza branch;
- Hopefully provide jobs for local residents;
- Concern that it doesn't affect traffic as on a corner with traffic lights.

5.4 Public comments stated as being in neither in support nor objection – 2no. written representations:

- Shame to have one of the remaining pubs in Swanscombe turned into a takeaway building;

- A restaurant or gastro pub would make more sense as nowhere in Swanscombe to have a meal out;
- Concern that there is no parking and people pulling up onto the pavement to collect pizzas that would cause problems with the traffic lights in front of the property.

5.5 Public comments in objection – 47 written representations:

- Additional traffic and congestion;
- Illegal parking at busy traffic light junction;
- Parking inadequate in area blighted by inconsiderate drivers and inadequately policed;
- Public house clientele has largely walked from the local community, a delivery and takeaway business generates much more frequent footfall largely by motorised vehicles;
- Swanscombe does not need more takeaways;
- Swanscombe already has a fish and chips, Chinese, kebab and pizza takeaway, and 2 minutes away an Indian and another kebab takeaway;
- There are already a number of takeaways in Swanscombe which serve pizza as well;
- Takeaways and pizza delivery outlets are also in nearby areas with 14 in a 6 mile radius;
- Having more takeaways is promoting unhealthy eating for adults and children;
- Nuisance from noise and anti-social behaviour;
- Only 3 pubs and Sports pavilion left in Swanscombe for entertainment;
- Impact on character of the area and entrance to Swanscombe;
- Pizza takeaway will not give good impression as enter Swanscombe;
- Increased litter from people leaving the premises;
- No mention of what is intended for the upstairs accommodation which have been residential or used for bed and breakfast guests;
- If a takeaway is needed in Ebbsfleet it should be in Ebbsfleet;
- Loss of the George and Dragon as an asset/hub and much loved historic part of the community, iconic and beautiful building, and devastating to the surrounding area;
- Due to heritage of the building would be nice to see it open as a pub again;
- Already lost three pubs from the local area, more housing and more people and only two pubs;
- Other uses suggested such as destination of choice for families, carvery, youth club/centre, family friendly restaurant, place for community to get together, doctor's surgery, medical walk-in-centre, greengrocers or somewhere offering healthy food;
- More effort should be made to seek a buyer for the pub or offer it to a brewery, pubs are the centre of their community, pizza places are not;
- The George and Dragon had such a wonderful community spirit and was always busy with many regulars;
- Given Ebbsfleet village and Theme park development adding thousands of visitors to the area surely a local pub with character beneficial to the community long term;
- Experience in SE London of number of pubs disappear, planning consent for flats rejected, the pub turned into a takeaway, which shuts after a year, the premises then left empty for a year and then turned into flats.

5.6 Cllr Emma Ben Moussa (Dartford Borough Council – Swanscombe Ward) and Swanscombe and Greenhithe Borough Council – Swanscombe Ward) in objection

- The George and the Dragon was a much loved historic part of our community and the general opinion is it would be nice to keep it as a community place or a public house as it was, or a sit down (healthy restaurant).
- Currently have 14 pizza outlets in a 6 mile radius. Our high street currently has a fish and chips, Chinese, kebab and pizza takeaway and 2 minutes up the road an Indian and another kebab takeaway. We have more than enough takeaways here and it was our belief that EDC is promoting a healthy lifestyle, surely that shouldn't including opening more takeaways.
- The London road is often stuck in gridlock, residents are worried this will bring more pressure to Swanscombe's roads. They don't want the entrance of our town to be a takeaway, its a beautiful building and we like it to remain as something Swanscombe can be proud of.

5.7 Cllr Lesley Howes (Swanscombe and Greenhithe Borough Council – Knockhall Ward) in objection -

- Although the property is historically a public house the cliental has largely walked there from the local community. A delivery and take away business generates a much more frequent footfall which largely comes by motorised vehicles.
- Parking is inadequate in an area already blighted by inconsiderate drivers and parking is inadequately policed.
- The building is situated by traffic lights on a major road junction.
- Takeaways largely generate more rubbish.
- There is no mention of alterations to the upper floors which have been residential or used for Bed and Breakfast guests.

Second Round of Publicity - May 2020

5.8 A total of 55 written representations were received following publicity, which are detailed below. These comprise comments from a local residents, local councillors and members of the public. No comments were stated as being is support or neither in support nor objection.

5.9 Local residents in objection - 5no. written representations:

- Swanscombe has 4 or so entrances, this smart building opposite a church is one and would not like it to be replaced with another fast food vendor.
- Do not want a pizza place made out of one of Swanscombe's historic buildings.
- The High Street alone has fish and chips, kebab, Indian and Chinese amongst others and this will further bring down the appearance of the town.
- Parking will be an issue and with main road and traffic lights outside with the close opposite the only available parking for customers where cars already park illegally for the train station.
- The noise, appearance, disturbance of parking availability and general idea is very unappealing
- Insufficient provision appears to have been made for customer parking spaces which will put further pressure upon the adjacent road and private car parking spaces, resulting in an increase in vehicular emissions and noise pollution and a possible increased risk of accidents.
- Not only will it create more traffic, it was create more rubbish and pollution.

- The proposal does not appear to take existing traffic problems, such as HGVs turning, into account, particularly as the proposed site is adjacent to an industrial estate.
- Logic would also dictate that the current and severe litter problems encountered within the area will be further exacerbated by the opening of yet another fast food outlet.
- A westerly wind may be expected to direct all cooking aromas directly onto and into the neighbouring dwellings.
- There are already have enough fast food places in Swanscombe and don't need another.
- Inappropriate for this area with only negative impacts and no positive outcomes
- Will be problems with litter which is already bad enough, bad cooking smells over adjoining residential areas, noise nuisance, increase in traffic and pollution, and road safety will be compromised on this very busy corner/ road junction.
- 8 car parking spaces not enough, will lead to considerable problems from outlet users parking on the High Street, London Road, All Saints Close and the bus stops on London Road, it is already bad enough with rail commuters parking.
- Already 3 other fast food takeaways in the same street, a proliferation of takeaways is unwanted
- The pizza takeaway is on the daily route of school children going to a from school via the bus stops situated near to the site. Pizza consists of high density fat 3 in 10 children between 2 and 15 are already overweight. Research from the Foresight report (2007) and the Marmot Review (2010) has shown that there is a link with child obesity and fast food takeaways
- Litter and parking may become a problem during non covid 19 times there is already a litter and vermin problem on the high street (rats and foxes) due to rubbish yet another fast food outlet will add to this
- Parking may also become a problem as there is little or none in the area, parking within all saints close is restricted parking, there are yellow lines along the high street ,this would only leave a small area within the premises boundary
- Unwanted odours/smells may also be an issue.

5.10 Public comments in objection – 47no. written representations:

- The pub is over 100 years old changing to a pizza takeaway would be an insult to the history of the building
- Too many local buildings have changed in the past. Swanscombe is losing its identity
- Middle House, Bottom House, Blue Anchor, The Alma, Morning Star have all been demolished for housing, there should be no more
- Area still needs a good pub, The George and the Dragon closing has definitely affected the community with loss of a local meeting point and landmark
- Unnecessary development of an otherwise successful public house
- Locals need to have a selection of amenities – many takeaway and food places but not enough pubs. Bluewater nearby and many places already doing pizza delivery in this area so not needed
- One pub already allowed to be shut and turned into flats can’t allow another one to be turned into a pizza place not even a 100m from the one that closed
- This pub is an iconic pub and was always busy and needs to stay as is
- Have been enough closures of pubs in the area, surely especially with covid-19 should be looking to keep this wonderful pub open at all costs, a real community pub which attracts visitors from other areas as well.

- Already so many takeaways in Swanscombe so many places being knocked down to build flats.
- Terrible shame for the residents of Swanscombe to lose yet another pub with many have disappeared in recent years.
- Swanscombe in desperate need of a welcoming family-oriented pub run on the same lines as previously under the last owners of The George & Dragon. Inappropriate to consign this valuable community asset to history at this time.
- Far too many pubs in Kent have disappeared thanks to unscrupulous, predatory speculators
- Have lost all but 3 of our Public Houses.
- This pub needs protecting and remaining as a public house, several already disappeared, turned into housing developments, the Wheatsheaf is under threat of developers and the Sun unlikely to recover from Covid 19 impacts & current building condition leaving this as one of only two public houses remaining.
- Public Houses are integral places to maintain community spirit and can be a hub for positivity and events in a local area, and steeped in history. This pub an integral part of our community.
- the George and Dragon was a lovely place to go, should be left to become something where the residents will be proud to have it within their community.
- Various public houses closed recently it should be kept as a public house.
- More than enough takeaways in the area that half of the commercial properties are already taken up Swanscombe does not need another one
- Already enough takeaway food outlets in area including pizza, within walking distance of this pub.
- Surrounding areas have pizza establishments who deliver.
- Unwanted business by the community.
- Should be turned into something for children for an example a youth club
- Area needs a driving test centre
- Not addressing obesity
- Town has enough takeaways that cater to the needs of the town.
- Being on the corner of a busy main road will cause chaos for us local residents
- note that there are already shops spaces available at nearby new build estates that are probably more suitable.
- Another takeaway not needed, litter, traffic. What happened to community
- Don't need another fast food shop. Need a few pubs left.
- Swanscombe already has 5 establishments selling food, one of which includes pizza. It is located close to Bluewater which has numerous food establishments. There is no requirement for an additional restaurant/ takeaway
- Parking is a big issue at the end of Swanscombe and late opening hours will also impact people living near
- Will cause issues with traffic and noise especially if Paramount goes ahead.
- Poor access as on a junction off 2 busy roads when it was a pub people mostly walked there.
- Parking in area is already dangerous will make this worse
- Not suitable on a corner of a junction people will be stopping in the bus stop and dropping of litter in the local area
- Safety at that point on London Road as parked cars would lead to blind spots at the lights.
- Adjoining car park is very small.
- Limited visibility and tight corner already makes that turning dangerous with mix of people parking up and delivery drivers around the area also close to a high volume bus stop inevitable for an increase in accidents
- Would cause no end of aggravation to the local residents, increased traffic

- Pollution and danger to school children waiting to board buses next to outlet.
- Will cause further traffic congestion, additional to already experienced frequently due to Bluewater and A2/M25 traffic short cutting every time there is congestion.
- People do not stick to designated parking areas & will go for the easy option which in this case will mean causing hazards at an already busy junction.
- Inevitable that there will be a noise nuisance from visitors, cars and whatever delivery bikes are utilised until late in the evenings.
- Smell from the stack and will not fit into the area
- Be detrimental to town and neighbourhood
- Another fast food business would encourage more rubbish, antisocial behaviours by visitors to the site, increased noise levels, light disturbance.
- If pizza takeaway approved must stipulate that it cannot be turned into residential space for at least 10 years.
- Will increase the potential for anti-social behaviour in the vicinity
- No mention of what is intended for the upstairs
- Will only have a negative impact on the area generally.
- Blight to the area from litter, High Street is bad enough without a pizza restaurant.

5.11 Cllr Emma Ben Moussa (Dartford Borough Council – Swanscombe Ward) and Swanscombe and Greenhithe Borough Council – Swanscombe Ward) in objection:

- Previously objected to this application and will do so again
- Swanscombe has multiple take always already and the surrounding area has an abundance of pizza takeaways except maybe Ebbsfleet itself.
- Ebbsfleet vision is to be a healthy town and this contradicts that although Swanscombe is not in Ebbsfleet it would be nice to see the same emphasise on a healthier lifestyle given to us too.
- The road is traffic heavy and often have cars queuing up the high street with particularly dangerous parking around coop site, any additional traffic will make this more dangerous and EDC have kindly being trying to help us make it safer.

5.12 Cllr Anita Barham (Dartford Borough Council – Swanscombe Ward) in objection:

- Insufficient provision appears to have been made for customer parking spaces, which will put further pressure upon the adjacent road and private car parking spaces, resulting in an increase in vehicular emissions and noise pollution and a possible increased risk of accidents.
- The proposal does not appear to take existing traffic problems, such as HGVs turning, into account, particularly as the proposed site is adjacent to an industrial estate.
- Logic would also dictate that the current and severe litter problems encountered within the area will be further exacerbated by the opening of yet another fast food outlet.
- The Ebbsfleet Garden City vision is to be a healthy town; and this planning application contradicts that aspiration for a healthier lifestyle.

5.13 Cllr Peter Harman (Dartford Borough Council – Greenhithe & Knockhall Ward) in objection:

- Insufficient provision appears to have been made for customer parking spaces, which will put further pressure upon the adjacent road and private car parking spaces, resulting in an increase in vehicular emissions and noise pollution and a possible increased risk of accidents.

- The proposal does not appear to take existing traffic problems, such as HGVs turning, into account, particularly as the proposed site is adjacent to an industrial estate.
- Logic would also dictate that the current and severe litter problems encountered within the area will be further exacerbated by the opening of yet another fast food outlet.
- The Ebbsfleet Garden City vision is to be a healthy town; and this planning application contradicts that aspiration for a healthier lifestyle.

6.0 CONSULTATION RESPONSES

6.1 The following organisations have been consulted on the application:

- Kent County Council Highways and Transportation
- Dartford Borough Council
  - Planning
  - Environmental Health
- Swanscombe and Greenhithe Town Council
- Kent Police Crime Prevention Officer

6.2 The following responses have been received and summarised as follows:

Kent County Council Highways and Transportation (KCC Highways) - KCC Highways and Transportation would not normally comment on change of use applications. Suggest the applicant liaises with KCC Highways and Transportation and Dartford Borough Council to investigate the implementation of Double Yellow Lines within the vicinity of the site. Any changes to the Traffic Regulation Order would be subject to consultation and at a cost to the applicant.

EDC Officer Comment: A planning condition for the applicant to fund and use best endeavours to implement a TRO would be sought were permission recommended to be approved.

Dartford Borough Council Planning and Environmental Health (DBC) - Object to the proposed change of use as being contrary to Policies DP19 and DP21 of the adopted Local Plan and could result in harm to the character, amenity and highway safety in the surrounding area.

Public houses that area well-established within the locality are included within definition of Community Facilities within the Development Policies Plan (DPP) and covered by Policy DP21 where there is a reasonable possibility of the building being re-used to provide community services. The Council considers that the George and Dragon PH has been well-established in the community for some time, providing a meeting place for locals and a focus for the community, and is significantly different from the Alma PH which the applicant refers to. Consideration of the application to convert the Alma PH (18/01002/OUT) concluded that this did not provide a community facility.

DP12:2 advises that the loss of community facilities will only be permitted where they are no longer needed by the local community and the facility or land has no reasonable prospect of being viably reused to provide the same or other type of community use. A relatively short period of marketing took place for the property prior to it being sold, and the further marketing letter (dated 3 March 2020) advises that the

property has continued to be marketed following the submission of the application in November. However, the applicant appears to own the property already, based on Certificate A and so the Council have doubts about the purpose of this marketing and there is no information on any interest that was received in response to this marketing and how this was treated. The Borough Council have doubts whether such marketing is sufficient to conclude that there is no prospect of the property being used for another type of community use or indeed a public house. Given the location of the building close to a major growth area and on a strategic east-west route the Council consider that there is a reasonable possibility of the building being re-used as an A4 use or similar community service to serve the local area.

Policy DP19 of the adopted Local Plan sets out criteria for proposed A5 uses to be considered against. As the property is located on a strategic east-west route through the Borough, designated as an Air Quality Management Area the Council has concerns regarding likely traffic generation, and indiscriminate parking due to the short visits likely to result from this use, which could impact on the free flow of traffic in this area and highway safety around the junction with the High Street. The applicant's Design and Access statement refers to rear servicing and access at the property reached via private land outside of the red line planning application boundary, so request that EDC satisfy themselves that there are adequate rights of way for the proposed use.

Policy DP19:2 advises that takeaways will normally only be permitted within designated centres. The site falls outside of the designated district centre of Swanscombe and given its location on a main strategic road is likely to generate trips from a wider area than simply the district centre catchment. The Council raise concerns that this may result in increased private car use contrary to the objectives of the adopted Local Plan.

No information has been submitted with regard to odour and noise in relation to the proposed use, but the Council's Environmental Health Officers consider that an appropriate solution could be found to mitigate this. Should planning permission be granted conditions requiring details of a scheme for odour and noise control, details of any plant, a full air quality impact assessment, details of external lighting, and control on site working hours are requested. should planning permission be granted. Given the location of this property on a prominent ridge, the Council raise some concern that any plant or flues could be prominent on long-distance views as well the impacts from external lighting and consider that such matters should be assessed in detail. The applicant is also requested to contact Environmental Health, Food Safety Team at the initial design stage, with respect to advice on compliance with food safety legislation and advice regarding a food registration.

EDC Officer Comment: Whilst EDC are the determining authority and decision maker in respect of DBC planning policy, DBC remain the plan-making authority and therefore comments in this regard have been treated as being from the Planning Policy Manager. Were the application to be recommended for approval, planning conditions would be recommended for the matters raised by DBC Environmental Health.

Swanscombe and Greenhithe Town Council - Object to the application due to poor access over private land, inadequate parking leading to anti-social parking in surrounding area, effect on air quality, increased noise, litter, traffic and congestion with the adjacent junction the scene of numerous road traffic accidents, the proposal being out of keeping with character of the area, would negatively impact amenity and unsuitable at entrance to Swanscombe, insufficient evidence of need for the

proposed use and would go against EDC's objectives for healthy lifestyles. Advise sheer volume of responses to this application gives a very good indication on whether the application is wanted or needed by the local community. Request confirmation that the application meets the principles of the Dartford Adopted Local Plan.

EDC Officer Comment: The above comments have been considered in section 9 of this report.

Kent Police Crime Prevention Officer – Recommend the use of Secured By Design (SBD) security standards for any replacement doorsets and windows and other security items, as detailed in the SBD Commercial 2015 guide.

EDC Officer Comment: The application does not seek to replace doorsets or windows.

7.0 PLANNING POLICY

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

7.2 The development plan comprises the adopted Dartford Core Strategy 2011, the Dartford Development Policies Plan 2017 and the Kent Minerals and Waste Local Plan 2016. The Core Strategy provides the framework for development in the Borough of Dartford by outlining where, and how many, new homes and jobs will be created. The first policies of the plan identify locations for major development at Dartford Town Centre/ Northern Gateway, Ebbsfleet to Stone and the Thames Waterfront. Its objectives are also delivered through the Development Policies Plan 2017 which includes more detailed thematic policies, together with Supplementary Planning Documents (SPDs).

7.3 The development plan policies and supplementary planning documents relevant to the consideration of this application are set out below:

Dartford Core Strategy (CS) (September 2011)

- Policy CS9 - Skills and Training
- Policy CS12 - Network of Shopping Centres
- Policy CS15 - Managing Transport Demand
- Policy CS23 - Minimising Carbon Emissions

Dartford Development Policies Plan (DPP) (July 2017)

- Policy DP1 - Dartford's Presumption in Favour of Sustainable Development
- Policy DP2 - Good Design in Dartford
- Policy DP3 - Transport Impacts of Development
- Policy DP4 - Transport Access and Design
- Policy DP5 - Environmental and Amenity Protection
- Policy DP13 - Designated Heritage Assets
- Policy DP14 - Retail and Town Centre Development
- Policy DP17 - District Centre
- Policy DP19 - Food and Drink Establishments
- Policy DP20 - Identified Employment Areas
- Policy DP21 - Securing Community Facilities

8.0 OTHER RELEVANT GUIDANCE

National Planning Policy Framework and Guidance

8.1 The National Planning Policy Framework (NPPF) is a material consideration in the determination of planning applications. The Dartford Core Strategy and Development Polices Plan have been found to be sound and consistent with the NPPF. Planning Practice Guidance (PPG) supports and clarifies areas in the NPPF.

Supplementary Planning Guidance

8.2 The Council has adopted a number of Supplementary Planning Guidance documents, Development Briefs and Conservation Area Appraisals. These elaborate on adopted policies and are material considerations in determining planning applications. The following documents are relevant to the consideration of this application:

- Dartford Borough Council Parking Standards Supplementary Planning Document (July 2012)
- Swanscombe Peninsula West Planning Brief (February 2004)

Ebbsfleet Development Corporation Documents

8.3 EDC has published its Implementation Framework dated 2017 which sets out the area wide spatial framework, vision for Ebbsfleet alongside strategic development areas and associated design guidance.

8.4 EDC has produced a Sustainable Travel Strategy which considers a range of safe, convenient and affordable travel options for local journeys within the Ebbsfleet Development Area to reduce the need to use or own a car. The document was approved by the EDC board in May 2020 subject to final comments being received from Dartford and Gravesham Borough Councils.

9.0 PLANNING APPRAISAL

9.1 Principle of Development

9.1.1 The application site lies outside of Priority Areas and Strategic Sites identified by the Dartford Core Strategy however it is adjacent to, and shares a rear vehicle access with, an area allocated for employment uses as shown on the Dartford Policies Map. Dartford Core Strategy Policy CS7 supports the development and ongoing protection of such employment floorspace. The principle of the proposal for an A5 Class use of the property is not considered to prejudice ongoing operations of these adjoining employment uses, however detrimental impacts may occur without suitable controls over the proposal's operation.

9.1.2 The application site and most of the wider Swanscombe Peninsula are within the red line boundary of the proposed London Entertainment Resort, which has been classified as a Nationally Significant Infrastructure Project (NSIP). Relevant case law suggests that in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative proposals on an application site are, in most cases, not relevant in planning terms. The potential NSIP application for

London Entertainment Resort, as an alternative scheme, is not considered to impact assessment of this application under the Town and Country Planning Act 1990.

Loss of Community Facility

9.1.3 Paragraph 92 of the NPPF seeks, that in order to provide the social, recreational and cultural facilities and services the community needs, for planning policies and decisions to plan positively for the provision and use of community facilities, including public houses, to enhance the sustainability of communities and residential environments, and to guard against the unnecessary loss of valued facilities and services. The NPPF also encourages the taking into account, and supporting of, the delivery of local strategies to improve health, social and cultural well-being for all sections of the community. This is supported by paragraph 91 which seeks for planning policies and decisions to aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible, and enable and support healthy lifestyles.

9.1.4 Dartford Development Policies Plan 2017, in the preamble to policy DP21 sets out the need for retention of community facilities. Paragraph 14.4 identifies community facilities as encompassing buildings and spaces used for a variety of purposes. Paragraph 14.5 further identifies that facilities often valued by the community, including public houses that are well established within the locality and where there is a reasonable possibility of the building being reused to provide community services, as being community facilities.

9.1.5 The George and Dragon PH has been well established for a long period of time within the locality, and as a local meeting place and focus for the community, which is emphasised by the number of local objections received which comment on the loss of the public house use. Until the latter part of 2019 the George and Dragon was trading as a public house, with photographs of the existing interior showing the property to be in a good condition. The property retains facilities including the bar, standing and seating areas both internal and external, kitchen, rear servicing, basement, and storage areas. Many comments also refer to the three other public houses in Swanscombe which have been lost (through conversion to housing) over the previous 10 years. Comments from DBC that the George and Dragon PH's location close to a major growth area and on a strategic east-west route supports there being a reasonable possibility of the building being re-used as an A4 use or similar community service to serve the local area are considered justified, particularly in relation to upcoming residential and commercial development proposals in the vicinity and Ebbsfleet area as a whole, and the reduced number of public houses within Swanscombe itself.

9.1.6 Given the above, the proposed change of use of the George and Dragon PH, being a community facility, needs to satisfy the requirements of Policy DP21:2. This requires *clear evidence that a) the facility is shown not to be needed by the community (both current and future planned users), and (b) that all reasonable efforts have been made to preserve a community use, including exploration of appropriate solutions to retain the facility with operators/ service providers and where appropriate the local community. Consideration should include any potential future demand arising from new development located within the catchment area of the facility/ use.*

9.1.7 The pre-amble to policy DP21 in paragraphs 14.8 to 14.10 outlines the information required from applicants to address the requirements of Policy DP21:2, namely that it must be demonstrated that there must be no reasonable prospect of the community facility being viably reused to provide the same or another type of community use,

and that a full search for another operator/ provider should be made with sufficient effective marketing needing to have taken place, defined as:

"continuous proactive marketing for an appropriate period, but not exceeding 12 months, using a professional agent and an appropriate range of online, on site and other advertising media. The asking price should, throughout the 12 month period, be shown to be reasonable for the property and location, and to reflect the market value of the uses currently required under policy."

9.1.8 The application is supported by a Design and Access Statement which advises that the George and Dragon has been marketed with the same professional agent as for The Alma, a former public house nearby in Swanscombe, which was approved for conversion to housing in 2019. Several marketing letters from the estate agent have been submitted which state that at the time of instruction the George and Dragon was open and trading as a public house with food offering but closing down several days later. The letter advises the property has been marketed since 14 August 2019 for continued use as a public house with a full marketing campaign. No viewings were conducted and only one offer received at 'an unacceptable figure much below the asking price' with the intention of the party making the offer to demolish the property and construct a new purpose-built restaurant unit. The estate agent letter offers further opinion that a potential purchaser would be unlikely to secure a commercial loan or mortgage to acquire and refurbish the property.

9.1.9 Comments received from DBC highlight that the property was marketed for a short period of time before being sold to the current applicant, whom based on the application form ownership certificate was owner of the property at least 21 days prior to when this application was submitted on 27 November 2019. Publicly available Land Registry transaction data indicates this time period being shorter still with a sale of the property registered as having taken place on 30 September 2019, and pre-application advice was sought for a similar proposal in June/July 2019.

9.1.10 It is therefore questionable how proactive this marketing is since it has been carried out by the current owners and applicants whom would likely have little intention to sell the property. This is evidenced by the submitted marketing letters over the planning application period, which other than updating the number of views and enquiries from potential purchasers, do not provide any further information on potential purchasers, how their enquires were treated, their feedback on re-opening the property as a public house, nor any efforts to regularly refresh the marketing (for example press publications, updated sales particulars) to actively seek a buyer for the property. The proposed asking price for the property is stated as having been derived from being double the sale price of the Alma, with no supporting evidence in justification other than it being twice the floor area.

9.1.11 It is relevant to note that in addition to the specific circumstances of the Alma, the comparative letter, submitted by the same estate agent, in the application for its redevelopment (ref. DA/18/01002/OUT), detailed 13 viewings having been undertaken and offers received. In addition it provided feedback from potential purchasers on the capital expenditure for repairs and refurbishment of that property to assist demonstrating that sufficient marketing had taken place in that particular circumstance, where factors such as its poor condition, long period of being closed, and poor reputation over many years were applicable. By contrast the George and Dragon has been well-established for a long period of time as a local meeting place and focus for the community, recently in operation as a PH and seen to be in good condition, and would therefore require substantially more evidence to demonstrate it could no longer function as a PH or another community use.

9.1.12 Whilst the Dartford Development Policies plan does not prescribe a minimum marketing period, up to 12 months is referenced. With no viewings having been undertaken for the George and Dragon, and limited supporting information to demonstrate the asking price as reasonable, continuous proactive marketing of the property is therefore not considered to have been demonstrated within the application.

9.1.13 Notwithstanding the above, no evidence has been provided within the application to justify that there is no prospect of the building being used as a public house, nor that a full exploration of alternative community uses has taken place. It is therefore considered that the proposal has not met the requirements under Policy DP21:2 for development of an existing community facility.

9.1.14 The Design and Access Statement implies that a hot food takeaway could provide a community function as a meeting place since the NPPF refers to local shops and meeting places as community uses. Whilst, NPPF paragraph 92(a) refers to the provision of local shops and meeting places as community facilities, local shops generally fall within use class A1. A hot foot takeaway falls within use class A5, and the proposed ground floor plans submitted show minimal standing and seating within the customer waiting area for social interaction. The retention of the building as a community facility through the meeting space provided as part of its use as a hot food takeaway is therefore considered a weak argument.

9.1.15 Further comments provided by the agent for this application refer to the current temporary permitted development rights until 23 March 2021 for public houses to operate as a takeaway, that takeaways form important community services during current period of social distancing, and that these rights would enable temporary loss of the public house use. It is not considered however that the current permitted development rights, since they are temporary, provide any support as a fallback position for the permanent change of use proposed by this application.

Proposed use outside of a Designated Centre

9.1.16 Paragraph 85 of the NPPF advocates support for town centres, for a network and hierarchy to be defined and to promote their long-term vitality and viability. Building on the approach of the retail strategy from Core Strategy Policy CS12, the Dartford Development Policies Plan identifies a network of designated centres. Policy DP14:1 seeks for investment to be directed as planned towards centres, and that A-Class uses will not be permitted outside centres where the sequential test is not met. Policy DP17 provides support for A-Class uses in district centres and Policy DP19 resists further A5 Takeaway uses.

9.1.17 The Dartford Policies Map and Appendix B of the Development Policies Plan identifies specific properties as being within designated District and Neighbourhood Centres. The application site does not lie within these and as it lies within 300m of the nearest designated centre at Swanscombe High Street would be defined by the NPPF as an edge of centre location. It is however also physically separated from the centre with the only pedestrian route being a narrow footway of a road bridge crossing the east-west railway, and by being outside of a designated centre Policy DP19:2 defines the site as an inappropriate location for a takeaway.

9.1.18 Policy DP14:4 requires an impact assessment in addition for retail development over 500 sq. m floorspace, however as the floorspace of the George and Dragon PH is below this at 339 sq. m, an impact assessment is not required. A sequential test still

needs to be met to meet requirements of policy DP14:1 and a Sequential Sites Assessment has been submitted as part of this application. The assessment details a desktop search of available commercial properties within a ½ mile radius of Swanscombe District Centre having a floor area between 100-500 sq. m. This identified only one available property of size 74-84 sq. m, concluding that there are no available, suitable and viable sites within a nearby designated centre. Additionally the assessment notes that since the proposed use would replace an existing town centre use in an edge of centre location, there would be no increased level of harm to the existing centre as a result.

9.1.19 Planning Practice Guidance paragraph 011 (Reference ID: 2b-011-20190722 Revision date: 22 07 2019) advises that it is for the applicant to demonstrate compliance with the test, and that the application of the test will need to be proportionate and appropriate for the given proposal. The submitted assessment confirms it has been limited to a desktop search of the immediately nearby designated centre to the application site. Given that the scale of the proposed use would be expected to draw a much wider catchment than the immediate locality, it is considered that a desktop search alone is not sufficient to assess the availability of suitable property and that justifiable reasoning for the proposal needing to be located in Swanscombe would also be required to be demonstrated. As evidenced by local representations received, a range of existing takeaways are present within the nearest centre, providing no justification for the provision of an additional takeaway outside of the designated centre to meet the centre's needs. Wider area considerations could also be reasonably expected to be taken into account, for example opportunities to provide the use within new developments coming forward within Ebbsfleet. The sequential test is therefore not considered to have been passed.

9.1.20 Takeaways (Class A5) also need to be in accordance with Policy DP19:2 which specifically states that 'Takeaways (Class A5) will normally be permitted only within the development plan's network of designated centres.' The proposal for takeaway use outside of designated centre is therefore contrary to this adopted development plan policy and an adequate justification would be required to overcome this, which is not considered to have been provided.

Summary

9.1.21 The proposal is considered contrary to policies DP21, DP14 and DP19 of the adopted Dartford Development Policies Plan with no material considerations that would indicate otherwise, and therefore unacceptable in principle. It is additionally noted that both of these in-principle concerns were raised with the applicant at pre-application stage and when the application was originally submitted, with further information submitted to address the concerns still considered inadequate.

9.1.22 Other relevant matters to consider for the proposal are:

- Transport Impact, Access and Parking
- Impact upon Neighbouring Amenity
- Impact upon Visual Amenity and Heritage Assets

9.2 Transport Impact, Access and Parking

9.2.1 The NPPF advocates sustainable transport methods and the use of public transport, walking and cycling as a core planning principle. The NPPF requires that new developments should mitigate their impact on the highway and public transport

networks, to ensure delivery of travel choice and sustainable opportunities for travel. Dartford Development Plan Policy DP5 also requires that unacceptable impacts on neighbouring impacts from traffic, access and parking should not be caused by development, supported by policy DP19:1 in relation to these impacts from new food and drink uses (Classes A3, A4 and A5).

9.2.2 The NPPF states that development should only be prevented or refused on transport grounds where the impacts of development are severe. Policy DP3 requires development to be appropriately located and to avoid severe impacts on road traffic congestion, air quality, safety of road users, and excessive pressure for on-street parking. Policy DP4:2(g) requires proposals to be in full accordance with the Dartford Parking Standards SPD. For Use Class A5, the Dartford Parking Standards SPD requires 1 car parking space per 10 sq. m of floorspace for customers, and 1 car parking space per 2 staff, and for 339 sq. m floorspace of the property proposed to change use would equate to 34 spaces in addition to staff parking. Even were the ground floor area (157 sq. m) of the building to be considered alone given ancillary use of the floors above, the car parking requirement would equate to 15-16 spaces in addition to staff parking. Additionally, cycle parking of 1 space per 100 sq. m floorspace for customers and 1 space per 100 sq. m floorspace for staff (total 7 cycle spaces) would be required.

9.2.3 EDC's Sustainable Travel Strategy outlines a car parking standard for the Garden City in the context for a collection of sustainable travel modes being delivered. The commercial parking in the strategy is 20% lower than the Dartford Parking Standards SPD with the cycle parking requirement being 20% higher. For a class A5 use this provides a car parking requirement of 1 space per 12 sq. m for customers and 1 space per 2.4 staff, equating to customer car parking requirement of 28 spaces for the building, or 13 spaces if the ground floor was considered alone, both in addition to staff parking. 8 cycle parking spaces would also be required.

9.2.4 The location of the application site at the signal controlled junction of High Street and A226 London Road/ Galley Hill Road gives particular concern of the impact of overspill parking from the proposed use on the free flow of traffic in this area and highway safety at this junction. This concern has also been raised both in public comments and the consultation response from DBC. The adjacent residential area of All Saints Close to the east is also sufficiently close to the application site to be impacted by indiscriminate parking owing to the proposal. The short visits likely to result from customer collections also raise issues of potential parking on the adjacent footways, and the bus layby on the A226 which is close to the proposed customer entrance, particularly during evenings when parking enforcement is less likely, and idling vehicles within an Air Quality Management Area (AQMA).

9.2.5 The application site lies within an AQMA declared at A226 London Road/ Galley Hill Road due to levels of particles and nitrogen dioxide. Dartford DPP Policy DP5 requires additional consideration to be given to potential amenity factors such as air quality, which includes development resulting in additional traffic flows to impact AQMA's. No information has been submitted with the proposal in respect of its impact upon air quality. Comments from the Environmental Health officer at DBC confirm that if the scheme was deemed acceptable that such an assessment should be secured via condition.

9.2.6 The application is supported by a Transport Note which concludes that the site location is highly accessible by non-car modes of transport and that the 8 car parking spaces proposed would be sufficient to accommodate the likely demand for parking to be generated by proposal. 60% of total trade is anticipated to be via deliveries with

the remaining 40% as customer collections, and a large proportion of the latter placed as orders in advance (thereby reducing the period of stay) with a proportion of these trips by sustainable transport means. The 8 car parking spaces are proposed to the rear of the site, which would be accessed via private land of the adjoining industrial area, outside of the red line boundary of the application and ownership of the applicant. The applicant has confirmed that 24 hour rights exist over this land however has not substantiated this with any legal documentation, which raises concern over viability of its use for customer parking as identified in comments from DBC. No cycle parking has also been proposed.

9.2.7 The Transport Note refers to 2-3 staff employed within the unit, 2-3 delivery drivers during the day and 6-8 drivers in the evening. This is consistent with the employee numbers stated in the application form of 4no. full time and 8no. part time staff (8 FTE equivalent) over the proposed opening hours of 10.30am to midnight 7 days per week, although the applicant has clarified that these are the minimum employee numbers. The Transport Note also considers that parking restrictions on the surrounding highway network would discourage any on-street parking from occurring, and that the existing use as a PH would have generated some on-street parking where only staff parking was provided at the rear.

9.2.8 Comments received from KCC Highways refer to the introduction of a Traffic Regulation Order (TRO) to increase the parking restrictions to double yellow lines and the applicant has confirmed that they would be prepared to implement this and cover the cost. A TRO would require agreement of the District Authority, Dartford Borough Council, and be subject to public consultation before could be made. The introduction of a TRO could therefore not be certain, and whether it would prevent short term parking for collection of orders in late evenings and Sundays/ Bank Holidays when less likely to be enforced is questionable. It is therefore considered that minimal weight could be placed on this approach providing satisfactory mitigation to avoid inconsiderate customer parking and, even if a TRO was successful, would raise questions over enforceability.

9.2.9 Independent advice was therefore sought from a transport consultant who reviewed the submitted transport information and suitability of the on-site parking arrangement on behalf of the EDC/ In respect of on-street parking from the existing PH use it is advised as being unsubstantiated by any evidence, and unlikely to be the case given the nature and urban location of the public house and it being primarily a drinking establishment with a localised catchment area. This view is supported from the information submitted by the PH landlord in 2016 application for a ground floor extension (ref. EDC/16/0034) that customers travelled on foot, public transport, taxis, or by using off-site public car parking that are located too far distant for the short period of stay for a takeaway collection. The takeaway use also introduces delivery services which would not be applicable to a PH.

9.2.10 The transport review carried out further swept path analysis and confirmed the practical accessibility of the 8 car parking spaces as being acceptable. However further discussions with the EDC consultant advised that a more direct route through the site to reach the customer entrance would assist the practical operation and desirability of use by customers. However with regard to the number of spaces required for the proposed use, the review identified that the submitted information provides no quantitative evidence in relation to the anticipated peak delivery / collection demand or likely parking accumulation at the site, in addition to the staff parking requirements (which would include the type of delivery vehicles to be used), from which it could be confirmed that the on-site parking provision would be suitable,

as was provided in both of the appeal cases referenced in the applicant's transport note.

9.2.11 It has therefore not been demonstrated that the proposed parking provision, which is substantially below that required by the Parking Standards SPD and the EDC Sustainable Travel Strategy, would be satisfactory to prevent negative highway safety and parking impacts arising from the proposed change of use at the property. Given the sites location on a main strategic road there is considered a high probability of the use generating trips from a wider area than simply the district centre catchment, and it has also not been demonstrated that there would not be adverse material highways impacts from the traffic generated by the use, particularly given the sensitive location of the site within an AQMA.

9.2.11 For the reasons above, the proposal is therefore considered contrary to policies DP3, DP4, DP5 and DP19 of the Dartford Development Policies Plan. It is noted that concerns over parking provision were raised both at pre-application when the application was submitted, with the applicant being given the opportunity to address these.

9.3 Impact upon Neighbouring Amenity

9.3.1 Dartford Development Policies Plan Policy DP5 requires proposals to be acceptable with regard to impact on neighbours the environment and public health. Policy DP19 requires specifically for new food and drink uses (Classes A3, A4 and A5) to avoid adverse material impacts on; residential amenity of neighbours, and the local environment through noise, vibration and smells.

9.3.2 The site lies in close proximity to residential properties to the north and east, and commercial uses to the north, west, and south. Local amenity impacts considered to arise from the proposal are those of odour, anti-social behaviour and littering, noise and disturbance, with the majority of these impacts have been reflected in public comments received for the application. Local amenity aspects from traffic, access and parking has been considered in section 9.2 of this report.

Odour

9.3.3 Pre-application advice was sought by the applicant for a similar proposal of an unrestricted Class A5 use, which would allow for a range of takeaway types. To address local amenity concerns the proposal in this application is restricted to a pizza takeaway which is generally regarded as having lesser impacts in respect of cooking odours than other takeaway uses due to the means of cooking that takes place. The applicant has additionally confirmed that all side orders are oven cooked and would agree to a condition preventing shallow fat frying. It is considered that, were the application recommended for approval, that the impact of cooking smells could satisfactorily be addressed through planning condition for this as well as further details of the replacement ventilation and extraction systems.

Anti-Social Behaviour and Littering

9.3.4 Use of the existing public house is largely contained within the building and enclosed seating area. Additionally the licensee has a responsibility to ensure customers do not cause nuisance to neighbours. The submitted Design and Access Statement advises the applicant would adhere to the same controls, however the proposal would involve more frequent foot traffic to and from the premises and less regulated outside of the planning system than a licensed premises. The takeaway use would

also generate customer waste in packaging being taken away, compared to the public house where food and drink is consumed within the premises and plates, glasses etc. collected by staff.

9.3.5 Opening hours are proposed from 10.30am until midnight on all days including Sundays and Bank Holidays, consistent with other pizza takeaways and similar to public house opening hours. The proposal with a restriction to a pizza takeaway makes it more practical for customers to take food home as opposed to consuming around the premises and locality, and reduces the number of customers travelling to the premises through the delivery operation and the likely impact upon neighbours. Notwithstanding this the proposal could give rise to additional anti-social behaviour and littering compared to the public house use. For the latter, the applicant has confirmed that a member of staff would litter pick three times a day around the premises and car park. It is considered these additional impacts could be mitigated through planning conditions to detail measures the applicant would take to prevent anti-social behaviour and manage should any occur and remove litter, including providing additional litter bins within the premises and forecourt.

Noise and Disturbance

9.3.6 The property is located on a busy junction with traffic noise such that daytime noise and disturbance, from customers and the ventilation and extraction system, is not considered to arise from the proposed use. Late night disturbance to nearby residents from customers entering and leaving the premises is considered could be addressed under condition for anti-social behaviour measures that the applicant would take to prevent this and manage if arose, with the likely impact similarly reduced by restriction to a pizza takeaway. The proposal would however involve use of delivery vehicles late into evening with noise from engines starting, and potential noise from car engines, doors, and radios from customers arriving in vehicles to collect food.

9.3.7 A new extract duct is proposed to the western elevation of the building, and the Design and Access Statement identifies that this would be of betterment to the existing systems. It is considered that the details of this in respect of noise impact could be satisfactorily secured through a planning condition. As considered under section 9.2, insufficient quantitative evidence of the peak parking demand for customer and staff vehicles has been provided, and the potential for overspill parking within the immediate area could also give rise to associated noise and disturbance impacts upon local residents, for example from indiscriminate parking in residential areas, car doors opening/closing, and stereos, particularly during late evening given the proposed opening hours until midnight.

Health

9.3.8 Several representations received refer to the contribution of the proposal to obesity both in children and adults and the site being on the route of children to school from the adjacent bus stop. It is noted that the development plan does not include takeaway exclusion zones of a specified distance from schools, and that The Craylands School, located nearest to the application site, lies approximately 800m distant. The Dartford Development Policies Plan identifies a network of designated centres and Policy DP19 resists further A5 Takeaway uses by requiring their location to be within designated centres, and preventing clustering of takeaways within centres. As covered in section 9.1, the proposal is considered contrary to policy DP19, with inadequate justification provided for the proposed A5 Takeaway Use

being located outside of a designated centre. This is considered to additionally address concerns with regard to health impact of the proposals.

9.4 Impact upon Visual Amenity and Heritage Assets

9.4.1 Dartford Development Policies Plan Policy DP2 requires proposals to relate to neighbouring buildings and the locality through their form, appearance and choice of materials and policy DP13 to have special regard to desirability of preserving a listed building or its setting.

9.4.2 The only external changes proposed relate to a new extract duct to the western elevation and low-level ancillary equipment on the southern elevation at ground floor. Comments from DBC refer to plant or flues being prominent in long distance views of the property with it being located on a prominent ridge. It is noted however that the site is adjoined by commercial properties and various telecommunications columns are also in close proximity.

9.4.3 The low-level ancillary equipment would be well-screened from public view at the rear, and the proposed extract duct location is discreetly sited where it is largely enclosed by the PH and adjoining commercial warehouse buildings. It would also be set back from the adjoining public highway. Nevertheless, approximately 3.5m of the duct would be visible in direct views from the northern elevation fronting the main strategic road and approximately 1m of the top of the flue from other sides. Were the application to be recommended for approval, it is considered that details of the final appearance could be secured through a planning condition (with more details of the system also required in respect of noise and odour control as discussed in section 9.3 above) to ensure it is sensitive to its surroundings.

9.4.4 The Grade II* Church of All Saints lies to the east on the opposite side of High Street. Due to the distance from the listed building and position on western elevation of the PH, where only 1m of the top part of the extract duct would potentially be visible to the east, it is not considered to impact the listed building setting.

9.4.5 Amended signage around the building would likely be required in connection with the change of use and to direct customers to the parking area at the rear. The submitted plans illustrate the locations of future proposed signage is intended to directly replace the existing PH fascia signage and therefore respectful of the existing building and these details would be subject to the Advertisement Regulations 2007.

9.5 Additional Considerations

Local Employment

9.5.1 Dartford Core Strategy Policy CS9 requires developments, commensurate with their size, to contribute to delivery of skills and promote apprenticeships and work placements within the development. The application form indicates it would create 8 full time equivalent (FTE) jobs, clarified by the applicant as a minimum number, but does not include details of employment levels for the PH use. Due to the scale of development proposed it is not considered appropriate to require provision of a Local Employment and Training Plan. The proposal would however provide a continued use for premises following closure of the public house and potential for future local job creation.

Sustainability

9.5.2 The NPPF sets out that planning plays a key role in delivering reductions to greenhouse gas emissions, minimising vulnerability and providing resilience to climate change. Dartford Core Strategy Policies CS23 and CS25 require all new development to demonstrate reductions in energy and water use. The floorspace changing use by the development would be under 1,000 sq. m and so not required to meet the above BREEAM standards. However the installation of modern ventilation and extraction systems, as well as any additional new equipment to facilitate the change of use, would generally entail higher standards of efficiency

Community Infrastructure Levy

9.5.3 In considering obligations to secure infrastructure improvements to offset the impact of this proposed development, it is necessary to acknowledge that Dartford Borough Council adopted a Community Infrastructure Levy (CIL) charging schedule in April 2014. CIL is a charge on development to raise and pool contributions from developers to help fund infrastructure and has replaced developer contributions for some types of infrastructure that in the past were funded through site specific s.106 Agreements. Since the proposal would not provide additional floorspace the development would not be liable to make a payment in respect of CIL.

10.0 FINANCIAL CONSIDERATIONS

10.1 Whilst this is not material to the decision, financial benefits will accrue to the area if permission is granted. The Government wishes to ensure that the decision-making process for major applications is as transparent as possible, so that local communities are more aware of the financial benefits that development can bring to their area. In this area the following benefits to the public purse accrue from development – Business Rates.

11.0 HUMAN RIGHTS

11.1 The application has been considered in the light of the Human Rights Act 1998 and it is considered that the analysis of the issues in this case, as set out in this report and recommendation below, is compatible with the Act.

12.0 PUBLIC SECTOR EQUALITY DUTY

12.1 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to –

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

12.2 It is considered that the application proposals would not conflict with objectives of the Duty.

13.0 CONCLUSIONS AND RECOMMENDATIONS

11.1 Following consideration of the information submitted within the application it is considered that insufficient evidence has been provided to satisfy local development plan policies regarding loss of the existing community facility and inappropriate location of a takeaway (Class A5) use outside of a designated centre. The principle of the development is therefore considered unacceptable.

11.2 Whilst the proposed restriction of the use to a pizza takeaway does overcome some concerns expressed at pre-application stage in respect of parking and impact upon residential amenity, the proposal has not demonstrated that sufficient car parking provision could be accommodated at the property and not result in unacceptable on-street parking adjacent to the application site; impacting transport and access conditions at the adjacent traffic-signalled junction and the surrounding area, parking within adjacent residential roads, and associated noise and disturbance impacts to residents within the immediate area.

11.3 The application is therefore recommended for refusal for the reasons outlined in the recommendation.

Case Officer	Manager
Michael Fishpool	Mark Pullin
Dated: 15th June 2020	Dated: 15th June 2020

APPENDIX 2

APPEAL DECISION REF: 3000770

The Planning Inspectorate

Appeal Decision

Site visit carried out on 10 March 2015

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 March 2015

Appeal Ref: APP/W3710/W/14/3000770
The Punch Bowl, Tuttle Hill, Nuneaton, Warwickshire CV10 0HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Zeeshan Chaudry against the decision of Nuneaton and Bedworth Borough Council.
- The application No 032816, dated 24 June 2014, was refused by a notice dated 2 September 2014.
- The development proposed comprises change of use from Class A4 (drinking establishment) to Class A5 (hot food takeaway), installation of extraction/ventilation equipment and minor external alterations.

Decision

1. For the reasons that follow, the appeal is allowed and planning permission is granted for change of use from Class A4 (drinking establishment) to Class A5 (hot food takeaway), installation of extraction/ventilation equipment and minor external alterations at The Punch Bowl, Tuttle Hill, Nuneaton in accordance with the terms of the application, No 032816, dated 24 June 2014, subject to the conditions set out in the schedule below.

Application for Costs

2. An application for costs was made by the appellant against Nuneaton and Bedworth Borough Council. That application will be the subject of a separate Decision to follow.

Preliminary Matters

3. The appeal submission includes amended plans.[1] A small bin storage area is added to the rear of the building, comprising an unroofed timber enclosure with a maximum height of some 1.8 metres. In addition, air conditioning and cold room compressor units shown on the original plans as being located on the side facing south-east and north-west elevations respectively, are relocated to the rear elevation, sited immediately above the proposed bin store area.

4. The Council was consulted on the revisions, which are based on the comments of the Environmental Health Officer, and confirms that it is happy to proceed on the basis of the amended plans. The alterations are very minor and I am satisfied that no party would be prejudiced by me determining the appeal on the same basis.

[1] Plan No 14018 Rev C (Proposed elevations Sheet 1) includes amendments dated 12 September 2014 (external bin store indicated) and 19 September (position of condensers amended in line with planning consultant comments). An additional plan (No 14018 Proposed bin store) also shows details of the proposed bin enclosure.

5. Local residents who back onto the appeal site are concerned about the stability of a boundary wall. However, that is a private matter and has no bearing on the planning merits of the respective cases.

Main Issues

6. These relate to the effect of the proposal on the vitality and viability of the town centre, and on the living conditions of nearby residents, having particular regard to noise, disturbance and odour.

Reasons

Vitality and Viability

7. The development plan for the area includes the Nuneaton and Bedworth Borough Local Plan 2006. Policy S7 of the Plan indicates that outside a town or district centre, permission for A5 uses (among others) will only be permitted if specified criteria are met. The first of these requires that such uses are located within existing or new local centres. Since the appeal premises are not located in an existing or new local centre, there would be conflict with criterion a) of the policy.

8. Although there is no explanation in the supporting text as to the purpose of the criterion, the Council's evidence suggests that it is aimed at sustaining and enhancing the vitality and viability of existing centres. However, in not providing any flexibility for A5 uses outside of designated locations, the policy does not chime entirely with Section 2 of the National Planning Policy Framework (the Framework). Whilst seeking to ensure the vitality of town centres, the Framework advocates a sequential, town centre first approach to applications for uses, allowing that, in some circumstances, such uses can be considered outside of town centre or edge of centre locations.

9. Although not required by the Council at application stage, the appellant has undertaken a sequential test, which concludes that there are no sequentially preferable reasonable alternative locations for the development proposed. However, the search related only to a pizza takeaway use and its associated catchment, as opposed to a general A5 use.[2]

10. The Government's Planning Practice Guidance confirms that sequential tests should recognise that certain town centre uses have particular market and locational requirements which may mean that they can only be accommodated in specific locations. I am also mindful of related case law drawn to my attention by the appellant, which has held that the proper test of suitability means suitable for the development proposed by the applicant, rather than suitable for some other purpose,[3] and that the issue of suitability is directed to the developer's proposals, not some alternative scheme.[4] In this case however, the description of development for which permission is sought, as set out on the application form, is described as a general A5 takeaway use, not a specific pizza takeaway use. To my mind, an unfettered A5 use is not directly comparable to the scenarios outlined in the legal cases to which I have been referred.

[2] I am advised, in this regard, that it is intended that, were the appeal to be successful, the premises would be used as a pizza takeaway.
[3] Tesco Stores Limited v Dundee City Council
[4] Threadneedle Property Investments v North Lincolnshire Council and Simons Development limited CO/4764/2012

11. In coming to a view on the appeal scheme, the proposal would not result in the introduction of a town centre use on a site where no such use exists at present. Rather, it would result in the substitution of one town centre use for another, within an existing building and with no increase in floorspace. In particular, it involves the substitution of a use that would provide drink (and often food) and which could, without the need for planning permission, be used as a restaurant, with another use that provides food and drink, albeit on a takeaway basis. In these circumstances, I consider that the results of the sequential test are not determinative in the circumstances of this particular case.

12. On balance, given the existing use of the appeal premises, I am not persuaded that the development proposed would necessarily compromise or undermine the vitality or viability of a town or district centre. There would be no conflict, therefore, with the underlying aim of criterion a) of policy S7, or with relevant national policy and guidance.

Living Conditions

13. Criterion b) to policy S7 requires that there should be sufficient separation between the development proposed and the nearest residential property, having regard to the size and nature of the proposal and the character and nature of the surrounding area. In order to protect the living conditions of neighbouring residents, the explanatory text to the policy indicates that this is unlikely to be less than 30 metres and, in some circumstances, may need to be more.

14. The appeal premises are surrounded by residential properties. As the nearest property is within some 6 metres of the existing building, the suggested 30 metre separation is not met. However, that is not the end of the matter. The interrelationship between the appeal site and adjacent properties is an existing arrangement: the question that needs to be addressed is whether there would be any harm as a consequence of the development proposed when compared with the existing lawful use.

15. Dealing firstly with the matter of cooking fumes and odours: it is not uncommon, in my experience, for hot food takeaways to be located close to residential accommodation and for fumes and smells to be dealt with by means of extraction equipment. I note, in this regard, that whilst there is considerable local opposition to the proposal, the Council's Environmental Health Officer is satisfied that the matter could be dealt with by the imposition of conditions relating to the siting and specifications of the extraction plant and equipment. As recorded by an Inspector in a previous appeal referred to by the appellant,[5] it is to be assumed that, if properly installed and maintained (matters that can be controlled by conditions were the appeal to succeed) cooking fumes and odours can be limited to an acceptable level. I have no reason to suppose that a suitable and effective extraction system could not be achieved at the appeal site.

16. Criterion f) to policy S7 requires that hot food takeaway proposals should not cause additional disturbance to the occupiers of nearby residential properties. The revised location for the air conditioning and cold room compressor units locates them to the rear elevation, further away from residential premises than

[5] Appeal ref: 2143267 Change of use from A1 retail to A5 hot food takeaway at 9c Trafford Drive, Nuneaton. Allowed 7 June 2011.

was proposed originally and the appellant's noise report demonstrates that, provided appropriate attenuation measures are provided (a matter than could be secured by condition) there would be no material harm to the living conditions of nearby residents in terms of noise from the operation of external plant at the premises.

17. In terms of noise and disturbance from customer movements, I am mindful that this is a predominantly residential area and that the site is surrounded on three sides by residential properties. However, the appeal premises are located on a fairly busy road and this is an existing (albeit currently vacant) public house that could be brought back into use at any time and which has an extensive parking area to the side/rear. The premises could also be used as a restaurant without the need for planning permission. There is no objective evidence before me to demonstrate that customers visiting a hot food takeaway at the premises would be likely to give rise to any greater noise and disturbance for local residents than would customers using the premises as a public house. I am especially mindful, in this regard, that the suggested opening hours (11.00-23.00 every day) correlate with the standard opening hours of public house premises.

18. To conclude on this issue, I am satisfied that, subject to conditions, use of the premises as a hot food takeaway would not result in any material harm to the living conditions of local residents in relation to cooking fumes/odours or noise and disturbance. I find no conflict therefore, with criteria b) and f) of policy S7.

Other Matters

19. Local residents raise concerns in relation to parking and highway safety. I have no reason to suppose that the existing car park is not commensurate with the size of the operation proposed. As such, there would be no need for customers to park on the highway. Although there are currently two accesses to the car park off the main road, the south-eastern access is not wide enough to accommodate two-way traffic, with the Highway Authority advising that the in-out arrangement proposed could cause confusion, with adverse implications for highway safety. However, those are matters that can be addressed by planning conditions were the appeal to succeed and I find no harm in this regard.

20. Concerns were also raised in relation to a number of other matters, including loss of the pub as a community facility. This was addressed in the officer's report, with the officer concluding that there would be no material harm. In the absence of any substantiated evidence to challenge that conclusion, I concur with the reasoning set out in that report. In relation to concerns in relation to locating a hot food takeaway close to a school, the closest I saw on my site visit was a primary school. It seems unlikely to me that primary age pupils would be allowed off the school premises during school hours. Whilst healthy eating and lifestyle policies are important for public health and are a material consideration, I am not persuaded that healthy eating by school pupils, or indeed anyone resident in the locality, is likely to be affected to such a degree in this instance that the appeal should fail in this regard.

Conclusion

21. For the reasons set out above, I conclude on balance that the appeal should

succeed. I recognise that the many local residents who objected to the proposal, including those who signed the petition at application stage, will be disappointed by the outcome and am mindful of the Government's 'localism' agenda. However, even under 'localism', the views of local residents, very important though they are, must be balanced against other considerations. In coming to my conclusions on the determinative issues, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the National Planning Policy Framework. For the reasons set out above, the evidence in this case leads me to conclude that the appeal should be allowed.

22. The Council has suggested a number of conditions. In addition to the standard implementation condition, and otherwise than as set out in the decision and conditions, it is necessary that development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

23. In order to protect living conditions, the Council required the submission of details of the extraction equipment, and the air conditioning/cold room compressor units. Those details have already been provided on the application plans, and the appellant's noise report includes the results of noise survey work at the appeal site and details of noise emissions in relation to the plant and equipment proposed. I have, therefore, used a single condition, based on that suggested by the appellant, which requires that the extraction equipment and the air conditioning and cold room compressors are installed in accordance with the approved details and that they operate within maximum noise levels based on the survey results. A condition is also required to control opening hours.

24. In the interest of highway safety, it is necessary to ensure that the parking area is retained and is made available for customers, that the south-eastern access is closed off to vehicular traffic, and that the remaining north-western access is retained at sufficient width to allow oncoming vehicles to pass and is not gated within 6 metres of the carriageway edge.

25. The Council suggests that a condition be imposed requiring that servicing of the premises does not take place from the public highway. However, such a condition would be *ultra vires,* in that it seeks to prevent what might otherwise be lawful operations. The important thing is that there is sufficient room within the appeal site such that servicing is not required to take place from the street.

Jennifer A Vyse

INSPECTOR

Schedule of conditions attached to
Appeal Decision APP/W3710/W/14/3000770
The Punch Bowl, Tuttle Hill, Nuneaton

1) The development hereby permitted shall begin no later than the end of three years from the date of this decision.

2) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with the following approved plans: No 14018 Rev B (proposed plan); No 14018

Rev C (proposed elevations sheet 1); No 14018 Rev C (proposed elevations sheet 2); and No 14018 (proposed bin store).

3) The use hereby permitted shall not begin until the fume extraction system and the air conditioning and cold room compressors, have been installed in accordance with details shown on the approved plans and as set out in the Noise Assessment Report prepared by Cole Jarman (14/0555/R1a) dated 12 November 2014, and are fully operational. External noise emissions from fixed plant and machinery shall be attenuated such that at 1 metre from the façade of the nearest residences it does not exceed 36dB$L_{Aeq(5\ min)}$ between 09.00-23.00 hours and 33dB$L_{Aeq(5\ min)}$ between 23.00-09.00 hours. Once installed, the related odour control and noise attenuation measures shall be retained in perpetuity in accordance with the approved details.

4) The use hereby permitted shall not take place other than between the hours of 11.00 and 23.00 on any day.

5) Prior to commencement of the use hereby permitted, the south-eastern vehicular access to the site shall have been permanently closed off and the footway/highway verge reinstated in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

6) Prior to commencement of the use hereby permitted, the fences and gates within the north-western vehicular access to the site shall have been removed or altered such that the access is no less than 5 metres in width for a distance of at least 20 metres from the near edge of the public highway carriageway. No gates shall be installed across the vehicular access so as to open within 6 metres of the public highway carriageway.

7) The existing parking and vehicular circulation area shall be permanently retained for that purpose and shall be available to customers at all times when the premises are open for business.

----------end of conditions----------

APPENDIX 3

APPEAL AND COSTS DECISION REF: 3175558

The Planning Inspectorate

Appeal Decision

Site visit made on 22 August, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th September, 2017

Appeal Ref: APP/J1535/W/17/3175558
1 Brook Parade, Chigwell, IG7 6PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Domino's Pizza UK & Ireland Plc against the decision of Epping Forest District Council.
- The application Ref: EPF/2931/16 dated 4 November, 2016 was refused by notice dated 1 February, 2017.
- The development proposed is change of use from Use Class A2 (Financial and Professional Services) to use for purposes within Use Class A5 (Hot Food Takeaway); replacement of compressors; erection of extraction duct and new shop entrance; and new fresh air intake grill.

Decision

1. The appeal is allowed and planning permission is granted for is change of use from Use Class A2 (Financial and Professional Services) to use for purposes within Use Class A5 (Hot Food Takeaway); replacement of compressors; erection of extraction duct and new shop entrance; and new fresh air intake grille at 1 Brook Parade, Chigwell, IG7 6PD in accordance with the terms of the application, Ref: EPF/2931/16 dated 4 November, 2017 subject to the conditions set out in the Schedule to this Decision.

Application for costs

2. An application for costs was made by Domino's Pizza against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development given above is different from that on the original application but the change was agreed by the parties and I have therefore used the revised description.

4. The appellant has submitted revised plans which take account of mitigation measures recommended in the appellant's Noise Assessment report, also submitted as part of appeal information. I have considered whether the development would be so changed that any party would be prejudiced by being deprived of an opportunity to be consulted on these plans, and have concluded that they would not. I have therefore accepted these plans and taken them into account in reaching my decision.

5. The Council has drawn my attention to its Draft Local Plan for consultation, although as this is at a relatively early stage in its preparation, its policies may be subject to change. This therefore diminishes the weight I can attach to its policies, and I have therefore considered this appeal in the light of the policies contained within the Local Plan and Alterations 2006 (the LP).

Main Issue

6. Part of the single reason for refusal given was that the proposal would provide a service already provided for in the locality, and that therefore there is no overriding need for the development which would outweigh the harm it is likely to cause. However, these are commercial considerations, which are not rightly the subject of planning decisions, and no national or local policy requires an assessment of the need for a development to be demonstrated.

7. Accordingly, the main issue is solely the effect of the proposal on the living conditions of neighbouring occupiers with respect to noise and disturbance.

Reasons

8. Brook Parade is an early twentieth century shopping parade in the Chigwell Local Centre with a range of shops and other businesses at ground floor level and two storeys of residential accommodation above. It is set on a small access road to the front, which contains spaces for customer parking, and a service road, Brook Mews, to the rear with access to parking for residents and businesses, refuse storage and other functional uses. There are small residential balconies to the front elevation, and a number of properties have roof terraces for residents to the rear, including one on the upper floor of the appeal building. Most of the ground floor businesses have plant on the rear elevation. The parade is a busy one during the day, and is set on the busy High Road, close to the tube station.

9. The proposed change of use from a former bank to a hot food takeaway would include the installation of plant including an extract duct and air compressors. The submitted expert Noise Assessment report was compiled in line with standards set out in BS 4142:2014. It concludes that, subject to the mitigation measures included in the revised plans, the operation of this plant would not exceed acceptable noise levels. The revised plans show the air conditioning and compressor units moved into a basement area and the incorporation of silencers into the fans, following the recommended mitigation measures. On this basis, I can see no reason to doubt the findings and recommendations of the appellant's Noise Assessment, while the Council has submitted no technical evidence of its own which would cause me to do so.

10. While acknowledging these findings, the Council is clear that it does not agree with the report, due to the subjective nature of noise, by which I take it to mean the way in which it is experienced by receptors. Hours of operation by the proposed use are cited as taking place up to 01:00, which, it is contended would be an important factor in the impact on receptors, the neighbouring occupiers, and would constrain certain, although unspecified, activities.

11. However, it appears to me from the submitted evidence that the Council and the appellant had previously agreed that the hours of operation would extend only to 23:00 at night, and that the appellant is willing to accept a condition restricting opening hours to up to 23:00. The appellant has submitted

evidence demonstrating that these hours have been found acceptable elsewhere in the district in terms of their effects on neighbouring occupiers, and I can see no reason to disagree with this.

12. The Noise Assessment also concludes that the impact arising from delivery vehicles associated with the use would be negligible or minor. It has been made clear by the appellant that delivery vehicles would not include mopeds, and that they would operate from the front of the premises, with parking spaces to the rear reserved for staff. As also there would be likely to be free parking spaces to the front during the evenings, I can see no reason why delivery vehicles would cause disturbance to the rear of the block which would be the area most sensitive to disturbance for residents.

13. I conclude therefore that noise levels arising from plant associated with the proposed use would be attenuated, and that their effect on receptors in an area of ambient noise caused by existing plant, a busy shopping centre and a busy road would not be harmful. I conclude also that due to the operational arrangements and hours set out above harmful levels of noise and disturbance would not arise from delivery vehicles.

14. It appears to me from the evidence supplied that there would a reasonable expectation that the majority of meals would be delivered rather than picked up on site by customers. Consequently, and as no convincing evidence has been submitted to the contrary, I conclude that there would not be likely to be significant levels of customer activity on site, and that harmful levels of noise or disturbance would not therefore be likely to arise from that source.

15. As the proposal would not therefore be likely to cause harm to the living conditions of neighbouring occupiers, it would not conflict with policy DBE9 of the LP, which seeks development which does not result in an excessive loss of amenity for neighbouring properties, including in respect of noise, smell or other disturbance.

Other Matters

16. As I have set out at the beginning of this decision, issues relating to commercial considerations are not planning matters, and neither is the concern that the proposed use would be by a corporate chain, or the possible effects on dietary habits of local residents. Fear of crime is also cited as a concern, but no evidence has been put before me to persuade me that the presence of a pizza delivery business would lead to an increase in criminality in the area. As food would generally be taken to be consumed elsewhere, I conclude that there would not be likely to be a significant effect on levels of litter in the vicinity. The proposed extract duct would extend to a metre above the height of the roof, and would not be situated close to the roof terrace below, and I conclude therefore that it would not have a harmful effect in terms of smells.

Conditions

17. The Council has supplied a list of suggested planning conditions, on which the appellant has had an opportunity to comment, and I have taken these into account. A condition requiring implementation of the scheme in accordance with the approved plans, taking into account revisions, would be necessary in the interests of clarity.

18. The appellant has indicated that details relating to the equipment to supress and disperse cooking fumes and smells have been submitted as part of the application, and that rather than a pre-commencement condition, a condition ensuring compliance with the details provided should be applied. It appears to me that this would be reasonable and necessary, and that such a condition should be applied. It appears to me also that the external appearance of the extract duct has already been shown on the approved plans, and that it would not be reasonable or necessary to condition this aspect of the scheme. Furthermore, details of provision for foul drainage and grease separation are matters for the Building Regulations or Environmental Health rather than the planning system, and accordingly a condition relating to these would not be reasonable or necessary either.

19. A condition controlling hours of opening, taking account of the previously agreed closing time of 23:00, would be necessary in the interests of protecting the living conditions of neighbouring occupiers. A condition restricting the works of construction in relation to the change of use would also be necessary in the interests of protecting the living conditions of neighbouring occupiers.

Conclusion

20. For the reasons given above therefore, and taking into account all other matters raised, I conclude that the appeal should be allowed.

S J Buckingham

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

1) The development hereby permitted shall be carried out in accordance with the following approved plans: DB214-LP, DB214-BP revision B, DB214-EX-01 revision A, DB214-EX-02 revision A, DB214-EX-03 revision A, DB214-EX-04, DB214-GA-05 revision A, DB214-EL-06 revision A, DB214-EL-07 revision A, DB214-EL-08 revision A.

2) The development hereby permitted shall not be occupied until equipment to control the emission of fumes and smell from the premises shall have been constructed in accordance with details shown on the approved plans.

3) The premises shall only be open for customers between the following hours: 10.00 – 23.00 Mondays – Sundays inclusive.

4) Demolition or construction works shall take place only between 07.30 to 18.30 on Mondays to Fridays, 08.00 to 13.00 Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

The Planning Inspectorate

Costs Decision

Site visit made on 22 August, 2017

by S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th September, 2017

Costs application in relation to Appeal Ref: APP/J1535/W/17/3175558
1 Brook Parade, Chigwell, IG7 6PD

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Domino's Pizza UK & Ireland Plc for a partial award of costs against Epping Forest District Council.
- The appeal was against the refusal of planning permission for change of use from Use Class A2 (Financial and Professional Services) to use for purposes within Use Class A5 (Hot Food Takeaway); replacement of compressors; erection of extraction duct and new shop entrance; and new fresh air intake grille.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The grounds put forward by the applicant in this case are substantive, and are that the Council unreasonably refused the planning application which should have been permitted having regard to its accordance with the development plan, national policy and any other material considerations, and that it failed to substantiate each reason for refusing the application, and made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by objective analysis.

3. Specifically, the applicant refers to the reason for refusal given by the Council in its decision notice dated 1 February, 2017 which states that the proposal would provide a service already provided for in the locality, and that the specific use provided, a pizza delivery service, is already available in the locality, and that accordingly there would be no "over-riding need" for the development which would outweigh the harm it would be likely to cause by way of noise and disturbance.

4. The Council in its appeal statement has amplified its concerns in relation to the other dimension of its refusal, which is the effect of the change of use on the living conditions of occupiers neighbouring the site. It mentions that the Committee in reaching a decision considered other material considerations such as the mix of businesses, and found that there were no reasons to indicate that

planning permission should be granted as the proposal would provide a service already provided for in the locality.

5. The Local Plan and Amendments 2006 (the LP) contains policies relating to the retention of the vitality and viability of centres, and the loss of retail uses in local centres and key retail frontages. These are policies that might be considered to relate to the mix of businesses, but Council did not refer to any of these in its refusal or set out reasons why the development might be considered to conflict with them, although it would not entail the loss of a retail use.

6. In any case, it appears to me that the argument being made by the Council, particularly in the use of the term "overriding need" and reference to a service already provided for in the locality was a different one, which touched on commercial considerations. However, commercial competition is not a matter for the planning system, and, as will be seen from my Decision, it appears to me that this consideration was not a relevant one therefore.

7. No substantive information was provided by the Council in relation to this aspect of the refusal, while the applicant has drawn my attention to an absence of policies in the LP which require the applicant to demonstrate overriding need for town centre uses within an existing centre. There are no such policies either in the National Planning Policy Framework (the Framework); indeed Paragraph 23 of the Framework seeks to promote competitive town centres, which the glossary defines to include local centres.

8. It appears to me therefore that, although the Council concluded that the planning application should have been refused in relation to its effect on the living conditions of neighbouring occupiers, it unreasonably took into account irrelevant, commercial considerations, and failed to substantiate this aspect of its refusal of the application. It therefore made vague, generalised or inaccurate assertions about the proposal's impact, which were unsupported by objective analysis. By virtue of this I conclude that it has demonstrated unreasonable behaviour, and thereby caused the applicants to incur unnecessary or wasted expense in that part of the appeal process relating to the commercial aspects of the development.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Epping Forest District Council shall pay to Domino's Pizza UK & Ireland Plc, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to the aspects of the refusal notice discussed above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Epping Forest District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

S J Buckingham

INSPECTOR

APPENDIX 4

MARKETING DETAILS

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PRIVATE & CONFIDENTIAL

Zaan Limited
28 London Road
Rainham
Kent
ME8 6YX

RCO180803032020

18 August 2020

Dear Sirs

Re: George & Dragon, London Road, Swanscombe, Kent, DA10 0LQ

I write with regards to the above property, to provide you with a written update as to current proceedings, further to our correspondence of 3 March 2020.

Sidney Phillips were instructed on 14 August 2019 to market the Freehold interest of the property to the open market at an asking price of £550,000 plus VAT. In July 2018 Sidney Phillips sold a neighbouring public house, The Alma, for a figure in excess of £270,000 plus VAT. Given the poor condition of the property and the fact that it is close to half of the size of the George & Dragon, as experts in licenced property sales and valuations, with specialist knowledge of the region and area, we recommended the asking price of £550,000 giving due regard to the size of the property and the more favourable position along London Road. Logic dictates that £550,000 plus VAT is therefore a reasonable price.

At the time of instruction the property was vacant and the business closed.

Since the date of instruction, Sidney Phillips have undergone a full marketing campaign, in order to fully expose the opportunity to the local and national market, which to date included:

- Entrance onto Sidney Phillips website:
    - Retuned in 5,547 searches on our website
    - Details viewed 477 times on our website
    - PDF particulars downloaded 8 times

- Regular E-marketing campaigns sent out to 1,537 registered buyers on our database.

- Sales details sent by post and email following direct enquiries.

- ‘For Sale’ board erected from the date of instruction.

- Entrance onto Daltons website from date of instruction (398 web views, 21 enquiries).

- Entrance onto Businessforsale.com website from date of instruction (2,021 web views, 13 enquiries).

- Entrance onto Zoopla.co.uk website from date of instruction until March 2020 (591 result views, 28 web views).

- Entrance onto RightBiz.co.uk website from date of instruction (23,592 impressions, 427 web views, 13 enquiries).

- Entrance onto RightMove.co.uk website from date of instruction (1,056 web views in last 120 days).

- Entrance onto Morning Advertiser website from date of instruction (statistics unavailable).

- Advertising in industry specific publications:
    - Morning Advertiser - 4th September 2019

- Regular social media advertising via Twitter and Facebook.

From this marketing campaign, no viewings have been undertaken. It should be noted that there has been very little interest from applicants in purchasing the property for continued public house use, favouring alternative uses such as C3, C4, C2A, A1, A5 or a combination of these classes.

One offer has been received at £450,000 which was rejected on the account of it being considerably below the asking price. This offer was received from a Manchester based architect on behalf of an unknown client who had not viewed the property. This sum was offered based on the exiting property being demolished and a new purpose-built restaurant being erected to replace it.

We understand that an application was submitted for Change of Use in November 2019. Regardless of this, we have continued to market the property for sale for continued A4 usage without cessation.

I trust the contents of this letter are sufficient for your purposes but please do not hesitate to contact me if you require any additional information.

Yours sincerely
SIDNEY PHILLIPS

Robert Cockayne LLB AssocRICS FAVLP
Regional Valuations Manager - London & South East

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